



Select Board Meeting

Monday, January 13, 2020 7:00 PM
36 Bartlet Street, Andover, MA 01810
Select Board Conference Room

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TOWN CLERK'S OFFICE
2020 JAN -9 P 4:19

TOWN OF ANDOVER, MASS

- I. Call to Order – 7:00 P.M.
- II. Opening Ceremonies
 - A. Moment of Silence/Pledge of Allegiance
- III. Communications/Announcements/Liaison Reports
- IV. Citizens Petitions and Presentations
- V. Public Hearings
 - A. Andover Country Club, Inc. Liquor License Change in Officers / Directors and Transfer of Stock – (10 minutes)
Board to review and consider voting to approve a request from Andover County Club, Inc., 60 Canterbury Street, for a change in officers / directors and transfer of stock relating to its Hotel / Innkeeper All Alcohol Restaurant Alcoholic Beverages License and its Seasonal Restaurant All Alcoholic Beverages License.
- VI. Regular Business of the Board
 - A. Senior Center Transition Update – (5 minutes)
Town Manager and Director our Community Services to provide an update on senior center transition.
 - B. All Day Kindergarten – (10 minutes)
Board to consider voting to support proposal to eliminate fees for All Day Kindergarten.
 - C. Designation of Cormier Youth Center as a Polling Location – (10 minutes)
Board to consider voting to designate the Cormier Youth Center as the polling place for Precincts 1 & 3 for upcoming elections to be held in 2020 and 2021.
 - D. 11 Lewis Street "Town Yard" Request for Proposals (RFP) and Land Disposition Agreement (LDA) Review – 1st Reading – (30 minutes)
Board to receive an overview and update on the 11 Lewis Street RFP and LDA.
 - E. Bald Hill Land Swap – (20 minutes)
Board to discuss and consider voting on the proposed land swap of Bald Hill Compost Site and Dog Park for 126 Tewksbury Street.
 - F. Census Insert in Water Bill – (5 minutes)
Board to consider voting to insert information on census in quarterly water bill.

VII. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved:

Department	Name	Position	Rate/Term	Date of Hire
Community Services – Elder Services	Jane Burns (A. Connor)	Director	\$88,000.00/year	1/14/2020
Department of Public Works	Scott Kandrut (D. Dargie)	Senior Civil Engineer	\$86,125.65/year	1/14/2020
Information Technology	Martine Fabre (G. Leeds)	Solutions Administrator	\$77,627.07/year	1/21/2020
Community Services – Recreation	Christopher Dempsey (M. Lane)	Assistant Director	\$70,013.07/year	1/14/2020
Community Services – Recreation	Jeffrey Newman (C. Dempsey)	Recreation Coordinator	\$62,663.42/year	1/28/2020
Department of Public Works	Bianca Perla	Water Treatment Plant Intern	\$16.00/hour	1/13/2020
Community Services – Youth Services	Meera Kumar	Seasonal	\$12.00/hour	1/6/2020
Community Services – Youth Services	Joel Asare	Seasonal	\$12.00/hour	1/6/2020
Community Services - Recreation	Riley Lowe	Bradford Ski Monitor	\$12.00/hour	12/17/2019
Community Services – Recreation	Paul Pefine	Bradford Ski Monitor	\$12.00/hour	12/17/2019
Community Services – Recreation	Sean Wilen	Bradford Ski Monitor	\$12.00/hour	12/17/2019
Community Services - Recreation	Cameron Stober	Kid Care	\$12.00/hour	1/7/2020

VIII. Approval of Minutes

A. Board to approve minutes from the following meetings:

1. December 11, 2019 Tri-Board Meeting

IX. Executive Session

A. Board to vote to go into Executive Session pursuant to Purpose 2 of Massachusetts General Laws, Chapter 30, Section 21(a), to conduct strategy sessions in preparation for and/or negotiations with nonunion personnel, i.e., the Town Manager., and to approve Executive Session Meeting Minutes of December 2, 2019, and to return to open session.

X. Open Session

A. Reappointment of the Town Manager – (10 minutes)

Board to consider reappointment of the Town Manager and entry into a contract for such reappointment.

XI. Adjourn

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Kathryn Forina in the Town Manager's Office at 978-623-8215 or by email at kathryn.forina@andoverma.us

MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45



**Town of Andover
SELECT BOARD**

License and Permit Application Public Hearing Questionnaire

Please be willing and able to address these questions before the Select Board during your hearing.

Liquor License Application, Renewal, Change of Designated Manager

Name	Attorney Kathryn M. Morin
Address	68 Main Street, Suite 5, Andover, MA 01810
Title	Attorney
Company	Andover Country Club, Inc.
Are all employees who will be serving alcohol TIPS or ServSafe-Alcohol certified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Does the establishment or any employees have any prior violations in terms of liquor license compliance? If yes, please describe the nature of any violations.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Please describe your business and the plans that have brought you before the Board this evening.	Andover Country Club holds two licenses, one of which is seasonal. The proposal before the board is not a change in how business is conducted. The applications are limited to the addition of one new officer of the corporation and a change in the form of Mr. Cormier's ownership interest from his name personally to a trust of which he is lifetime beneficiary and the other existing owners are contingent beneficiaries.
Please provide an overview of qualifications, certifications, and experience of the designated manager of the establishment.	No new manager is proposed. The existing manager will continue to serve.



TOWN OF ANDOVER

Town Clerk's Office

36 Bartlet Street
Andover, MA 01810
978-623-8230
townclerk@andoverma.gov

TOWN OF ANDOVER



PUBLIC HEARING

Notice is hereby given under Chapter 138 of the General Laws, as amended, that Andover Country Club, Inc., 60 Canterbury Street, Andover, MA has applied for a change of officers/directors and transfer of stock to its Hotel/Innkeeper All Alcoholic Beverages License and its Seasonal Restaurant All Alcoholic Beverages License.

The public hearing will be held on Monday, January 13, 2020, in Conference Room A on the third floor of the Andover Town Offices, 36 Bartlet Street, Andover, MA at 7:00 p.m. in accordance with the General Laws relating thereto.

By Order of the
Select Board

Austin Simko
Town Clerk

Date of Issue: Thursday, January 2, 2020



TOWN OF ANDOVER

Town Clerk's Office

36 Bartlet Street
Andover, MA 01810
978-623-8230
townclerk@andoverma.gov

ANNUAL TOWN MEETING AND TOWN ELECTION CALENDAR

2020

TOWN ELECTION:	Tuesday, March 24, 2020 7:00AM - 8:00PM Precinct Polling places: Precincts 1 & 3 – Cormier Youth Center Precincts 4, 5, & 6 – Wood Hill Middle School Precincts 2, 7, 7A, 8, & 9 – Andover High School
ANNUAL TOWN MEETING:	April 27 & 28, May 4 & 5, 2020 7:00PM J. Everett Collins Center Auditorium Andover High School, Shawsheen Road
TOWN WARRANT:	Opens: Monday, October 28, 2019 Closes: Friday, January 24, 2020 (4:30PM)
BUDGET DUE TO TOWN:	Friday, February 7, 2020 (First Friday of February)
ANNUAL TOWN REPORT:	Tuesday, March 17, 2020 (7 days before town election)
FINANCE COMMITTEE REPORT	Friday, April 17, 2020 (10 days before business meeting)

PLEASE NOTE: Mail-in voter registration forms are available at the Registry of Motor Vehicles, Memorial Hall Library, all four Post Offices, the Secretary of the Commonwealth's web site, and the Town Offices on Bartlet Street. If you are not a registered voter, to be eligible to vote at an Election or Town Meeting, your mail-in form must be received or postmarked by the last day to register per State law. On-line voter registration is now available on the Secretary of the Commonwealth's web site.

ANDOVER TOWN ELECTION DEADLINES

1. Last day to submit nomination papers to the Board of Registrars for Town Election
Tuesday, February 4, 2020 5:00PM (49 days)
2. Last day to Withdraw from Town Election (notarized statement in writing)
Thursday, February 20, 2020 5:00PM (33days)
3. Last Day to Register to vote for the Town Election for non-registered voters:
Wednesday, March 4, 2020 (20 days)
Town Clerk's Office: Open for voter registration from 8:30AM to 8:00PM
4. Warrant Posted & Published: **No later than Tuesday, March 10, 2020 (14 days)**

ANNUAL TOWN MEETING DEADLINES

1. Last Day to Register to vote for the Annual Town Meeting for non-registered voters:

Tuesday, April 7, 2020 (20 days)

Town Clerk's Office: Open for voter registration from 8:30AM to 8:00PM

2. Warrant Posted & Published: **No later than Monday, April 13, 2020** (14 days)

TOWN ELECTION CAMPAIGN FINANCE REPORTING FOR 2016

REPORT DUE:

REPORTING PERIOD DATES:

**2019 End-of-Year
Due Jan. 20, 2020**

Reporting Period Ending: December 31, 2019

from date of last report filed in 2019:

- **April 16, 2019 – Dec. 31, 2019** (2019 candidates not dissolved)
- **January 1, 2019 - Dec. 31, 2019** (all others)

**8 Day Pre-Election
Due March 16, 2020**

Reporting period: January 1, 2020 - March 6, 2020

(accounting closes 10 days before due date)

**30 Day Post-Election
Due April 23, 2020**

Reporting period: March 7, 2020 – April 13, 2020

(accounting closes 10 days before due date)

**2020 End-of-Year
Due Jan. 20, 2021**

Reporting Period Ending - December 31, 2020

from date of last report filed in 2020:

- **April 14, 2020 through Dec. 31, 2020** (all 2020 candidates not dissolved)
- **January 1, 2020 through December 31, 2020** (all others)

Dissolution Report

Due when balance is zero with written notice

2020 STATE ELECTIONS

There are three state-wide elections scheduled in 2020: the Presidential Primary on Tuesday, March 3rd, the State Primary on Tuesday, September 1st, and the General (Presidential) Election on Tuesday November 3th.

TRANSIT-ORIENTED DEVELOPMENT OPPORTUNITY

REQUEST FOR PROPOSALS TO REDEVELOP FORMER ANDOVER TOWN YARD SITE

[DATE, 2020]

(DRAFT DOCUMENT)

I. INTRODUCTION

The Town of Andover is seeking a qualified developer to acquire and redevelop the former Town Yard site in the heart of the Historic Mill District (HMD).

The site, consisting of several parcels owned by the Town of Andover and used formerly as the “Town Yard” for the Department of Public Works, is available for purchase by a developer selected pursuant to this Request for Proposals.

The site, which totals approximately three acres, forms an important development site for the Town given its proximity to the MBTA Commuter Rail station and downtown Andover, and because of its potential role in supporting a connection between the Shawsheen River and downtown Andover. The site sits at the center of the recently rezoned Historic Mill District and offers a unique opportunity for Transit-Oriented,* Mixed-Use development. (* “Transit-Oriented development” is defined by compact, livable, and vibrant residential, business and leisure space located within walking distance of public transportation.)

The community seeks to replace a tired industrial use by the Town’s Department of Public Works with vibrant, attractive development that links the downtown to the station and provides a vital anchor for a revitalized Historic Mill District. While this Request for Proposals directly governs disposition and redevelopment of the former Town Yard, it also articulates planning objectives that relate, to a certain extent, to the Historic Mill District as a whole. For the anticipated redevelopment of the former Town Yard to be truly successful, it should catalyze, support, and facilitate district-wide improvements.

The Town of Andover and its residents have undertaken an extensive community process to identify elements that should be prioritized in a new development on this site.

Proposals are due at the Office of the Andover Purchasing Agent (the address and additional information are provided in Section VI, Submission Requirements) by 2:00 pm, local time, on ____, ____.

Submission by a Proposer of a Proposal represents acceptance of and agreement to all terms and conditions of this RFP.

II. GOALS AND OBJECTIVES

The Town seeks to enter into an agreement with a developer for the disposition and development of the former Town Yard site. The Town desires a mixed use development that serves as a destination in the Town and fits within the context of the Historic Mill District.

A detailed list and description of the Community Planning Objectives, as well as a summary of the Design Objectives for the Historic Mill District, are provided in Section IV below. The Selection Criteria described below call for adherence to these Planning and Design Objectives.

III. PROPERTY DESCRIPTION

LOCATION

a. Parcel Location

The parcels are located in the Town of Andover adjacent to the downtown commuter rail station. The parcels are irregularly shaped. They are primarily bordered by the rail tracks to the West, extending as far south as Pearson Street. The eastern boundary is Buxton Court, with access by Lewis Street. The parcels provide the key connection between Andover's downtown and the MBTA station. Some additional parcels along Buxton Court and Pearson Street are privately-owned and are therefore not included in this RFP. A map showing parcel boundaries can be found in Appendix [____].

b. Public Transit

The site is served by MBTA Commuter Rail at Andover Station. The boarding and debarking for this station for both inbound and outbound service is currently on the west side of the tracks, opposite the Town Yard site.

There is shuttle bus service provided by the Merrimack Valley Regional Transit Authority (MVRTA), which stops at Main and Central Streets, a short walk from the Town Yard site, and serves Chestnut Court, the Senior Center, Andover Commons, Shawsheen Plaza, Frye Circle, Doctors Park, the Andover/North Andover YMCA, and the North Andover Mall.

c. Vehicular Access

The site can be accessed by Lewis Street and Pearson Street and via Main Street (Rt. 28).

d. Parking

Any new development on the site will require the provision of parking as set forth in the Historic Mill District zoning regulations. Parking on neighborhood streets is either permit-restricted or time-limited. There is an MBTA parking lot, with approximately 150 parking spaces on the west side of the rail tracks, used by commuters.

e. Pedestrian and Bicycle Access

Existing pedestrian and bicycle infrastructure to the site is extremely limited.

SITE DESCRIPTION

a. Size

The overall parcel size is approximately three (3) acres. It is comprised of six (6) distinct parcels and a portion of the Lewis Street right-of-way.

Parcel Number	Address	Acres
38-32	15 Buxton Ct	0.60025
38-18	8-12 Buxton Ct	0.34438
38-17	6 Buxton Ct	0.10331

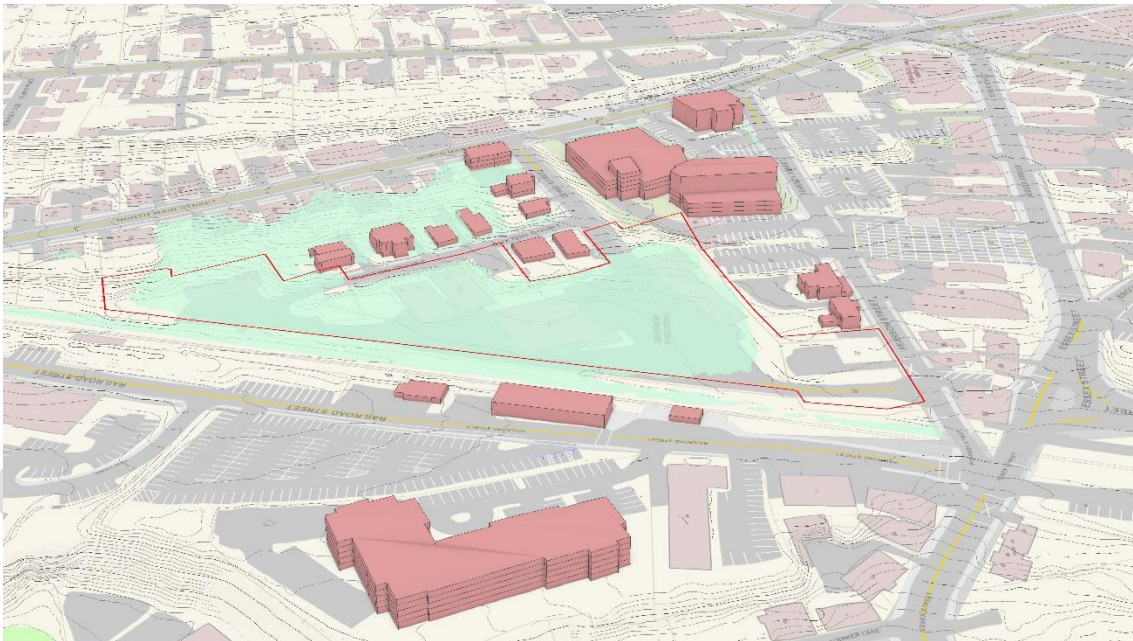
38-14	11 Lewis St	1.0199
38-2	41 Pearson St	0.17447
38-3	37 Pearson St	0.25138
Lewis St	ROW	0.15431
TOTAL		2.648

b. Shape

The site is generally triangular, but is irregularly shaped, and is bordered by small privately-owned parcels (not included in this RFP) along the southern and eastern boundaries.

c. Topography

In reference to the graphic below, there is a grade difference of approximately 18 feet from the lowest to the highest point on the parcel. These figures are estimates and Proposers will be expected to confirm topography changes as part of their own due diligence.



SITE CONTEXT – NEIGHBORHOOD AND ABUTTING PROPERTIES

a. Historic use (Town Yard)

The site was developed beginning in the 1890s as housing for workers at nearby mills and businesses. In 1964 it was converted to the Town Yard. The Town Yard served functions that included salt storage and vehicle storage and maintenance, as well as certain highway division offices. In 2019, DPW operations ceased at the Town Yard and moved to a new Municipal Services Facility at 5 Campanelli Drive. The site is currently inactive.

b. Context within Town (i.e. proximity to Downtown, River, Commuter Rail, etc.)

Understanding the site's positioning within the Town will be crucial to the success of a development on this site. The site is centrally located, with adjacencies to important assets within the Town. In addition to

the immediate adjacency to the MBTA Commuter Rail station and track, the site sits at the central point within the Historic Mill District (described in more detail in c., below). The Shawsheen River is less than a 5-minute walk to the West from the Town Yard site. The river supports activities including kayaking, fishing, and various nature trails. A 5-minute walk to the East brings one to Main Street. Main Street is Andover's downtown, home to a number of retail stores and restaurants, as well as Memorial Hall Library and other amenities.

c. Historic Mill District – description and other key uses

The Historic Mill District is a zoning overlay district within the Town which includes almost 100 acres of land, for which extensive planning and placemaking studies have been undertaken by the Town. The purpose of this overlay zone is “to encourage smart growth, and to foster a range of housing opportunities within mixed-use development projects, to be proposed in a distinctive and attractive site development program that promotes compact design, preservation of open space, and a variety of transportation options, including enhanced pedestrian access to employment and nearby transportation systems.” Other objectives of the HMD Overlay Zoning District can be found in Section 8.7.1 of the Town's Zoning Ordinance.

d. Commuter Rail Parking Lot

On the west side of the rail line, the MBTA owns a commuter rail parking lot located at 17 Railroad Street. This lot is comprised of approximately 150 surface parking spaces. Sitting at the center of the Historic Mill District and adjacent to the Town Yard site, this parking lot is a valuable target for future redevelopment. The Town would welcome complementary and context-sensitive redevelopment of this parking lot either during or after redevelopment of the Town Yard site – but development of the MBTA parking lot is not within the scope of this RFP. Any redevelopment of the parking lot requires coordination with and assent from the MBTA.

e. Additional Private Parcels

The Town welcomes, but does not require, the inclusion in a proposal of one or more privately-owned parcels along Buxton Court, Pearson Street, Railroad Street, and/or North Main Street. The Town recognizes that expanding a proposed development to encompass a larger area may allow a Proposer to achieve higher ratings on selection criteria set forth in this RFP. If one or more such parcels are included in a proposal, the proposal will be evaluated in its entirety in accordance with the selection criteria. In order for a proposal that includes any such parcels to be considered, the Proposer must submit as to each such parcel a deed, a purchase-and-sale agreement, or an option (which may be a non-exclusive option provided to more than one Proposer) to purchase the parcel in the event that the Proposer is selected pursuant to this RFP. Where a Proposer selected pursuant to this RFP included additional private parcels in the proposal, the Town's conveyance of the Town Yard site to the Proposer will be contingent on the Proposer acquiring such private parcels before or concurrent with the Proposer's acquisition of the Town Yard site. If a proposal includes one or more parcels outside of the Town Yard site, all requirements set forth in this RFP shall apply to the proposed development area in its entirety, as if such additional parcels were located within the Town Yard site.

TRAFFIC AND ACCESS IMPROVEMENTS

A traffic study and recommendations were completed by Design Consultants, Inc. (DCi). These have been included as Appendix [___]. The Town is committed to the recommendations made by DCi as a baseline for remediation. Development proposals are invited to improve upon these recommendations.

ZONING

As detailed more fully below (see “Submission Requirements”) Proposers are required by this RFP to submit a Conceptual Program and Plan (CPP) for the entire site. The CPP should include, but not be limited to, the elements of a pre-application “Concept Plan” required by §8.7.11(1) of the HMD Zoning By-law.

All development on the site shall be undertaken in accordance with §8.7 of the Andover Zoning By-law applicable to the HMD Overlay District. Proposers are required to certify that, if selected, they will apply for a Special Permit to develop the entire site pursuant to §8.7.3(2). All development on the site shall be in accordance with §8.7.3(2).

By virtue of this requirement, all proposals must demonstrate their compliance with the requirements as set forth in §8.7 of the Andover Zoning By-law, unless waived by the Planning Board in response to a request for a waiver enumerated in the proposal. Proposers are required, in their submissions, to enumerate each waiver they intend to request. The By-law requirements are quoted, paraphrased, or summarized here for convenience (summaries and paraphrasing are indicated by brackets []), but Proposers should not rely on this outline and should instead refer to the full text of the By-law, attached hereto:

§8.7.4 Housing and Affordability

No application within the HMD which contains residential use shall be approved unless at least 15% of the total dwelling units proposed are devoted to affordable housing.

§8.7.5 Permitted Uses

[Permitted uses include Multifamily dwellings, municipal facilities, structured parking facilities, religious or educational uses, child care facility, non-profit private club, personal service establishment, bank, retail sales establishment, convenience store, medical center or clinic, self-service laundry, restaurants, craft shop, office, motel or hotel, commercial parking lot or garage, and open space.]

§8.7.6 Density

1. [For residential use, a minimum of 3,000 square feet of lot area per dwelling unit is required, but the Planning Board may allow up to 40 residential units per acre.]
2. [No retail sales establishment may exceed 25,000 square feet.]
3. [The Planning Board may require the integration of residential and non-residential uses in a mixed-use structure.]

§8.7.7 Dimensional Regulations

[Includes, but is not limited to, maximum building heights of 35’ to 65’, depending on location. Maximum building coverage of 75% of the lot.]

§8.7.8 Design Objectives

Each project within the HMD shall:

1. Provide a positive economic benefit to Andover (including, but not limited to, fiscal impact, Town services, and employment), is in harmony with the general purpose and intent of the Master Plan and is not unreasonably detrimental to the overall General Business Districts, specifically Downtown Andover.
2. Blend the scale of residential, business and commercial structures into the site design;

3. Provide safe vehicular and pedestrian ways, and minimize traffic impacts;
4. Preserve natural features, wetlands, scenic vistas and open spaces when possible;
5. Minimize the visual impact of parking areas;
6. Assure safe interior circulation within its site by separating pedestrian, bike, and vehicular traffic.
7. [Omitted – not relevant to the Rail Corridor of the HMD]
8. Have appropriate signage to identify places, provide direction, and advertise businesses. Along with communicating information, signage should add to the character of each project and reinforce a sense of place:
 - a. Signs shall consist of high-quality materials and color palettes that reflect the architectural themes of the surrounding area.
 - b. Location and placement of signs should not obstruct pedestrian or vehicular movement.
9. Incorporate energy efficient and environmentally sensitive principles;
10. Incorporate pedestrian amenities, accessory uses and community benefits into the overall design in a harmonious way;

§8.7.10 Off-Street Parking and Loading Areas

1. Structured Parking. Parking within the HMD shall be accommodated within Structured Parking Facilities and under buildings to the maximum extent possible. On-street parking may be provided on private streets within the development project in front of and adjacent to retail stores.
2. Off-Street Parking. For any [new] structure . . . :
 - a. Residential uses require a minimum of 1.0 space per dwelling unit.
 - b. Non-residential uses require a minimum of 2 spaces per 1,000 sq. ft. of gross floor area.
3. Shared Parking Facilities. The Planning Board may allow for shared parking facilities within the HMD for different buildings or uses subject to the following provisions:
 - a. Up to 50% of the parking spaces serving a building may be used jointly for other uses not normally open, used or operated during similar hours. The applicant must demonstrate to the Planning Board that the peak demand and principal operating hours for each use are suitable for a common parking facility.]

ENVIRONMENTAL

A Notice of Activity and Use Limitation (AUL) was previously placed on the site but has been terminated. The AUL Termination is included as Appendix []. Proposers will be expected to evaluate the environmental condition of the site based on publicly available information prior to submitting their proposal. No on-site environmental investigation will be permitted prior to the submission of proposals and the selection by the Town of the Selected Developer pursuant to this RFP process. The Town makes no representation or warranty as to past, present or future environmental conditions in, on, under or around the site. The Selected Developer will be required to release the Town from all claims relating to environmental conditions on the site.

Also, included as Appendix [] is a hazardous materials survey.

IV. PLANNING COMMITMENTS

PLANNING PROCESS – *(include any pertinent documents as addenda to the RFP)*

The Town has undertaken a number of studies over the past 18 years. By reviewing these studies, Proposers will better understand the site, community and Town objectives, development potential and the larger context of the HMD. These documents are listed below and provided in Appendices [].

- a. HMD Public Opinion Survey results – 2019
- b. HMD Design Guidelines – 2018 (outlined below)
- c. DCi Traffic and Circulation Study – 2018
- d. Gamble Associates Strategic Placemaking Plan – 2018
- e. Woodard & Curran Water and Sewer Master Plan for the HMD – 2018
- f. HMD Overlay Zoning – 2015

PLANNING OBJECTIVES

The following planning objectives will be taken into consideration in rating and ranking proposals, and in selecting the most advantageous proposal. Selection criteria on [pages 20-22] of this RFP correlate directly with each of these objectives and indicate the manner in which ratings on each objective will be determined. In order to demonstrate the advantageousness of a proposal with respect to each objective, a Proposer must include in its CPP a narrative response, graphics, visual renderings, plans and elevations, as appropriate, specifically addressing that objective.

With respect to some of the objectives outlined below, there are alternative ways of fulfilling the objective, not all of which will necessarily be included in a proposal. However, as these are the priorities identified by the community, a proposal will not be successful if it does not address a significant portion of the alternatives identified for each objective. Ultimately, the community's goal is to create a new destination for residents, workers, and visitors alike, one which encourages extended stays downtown and creates an opportunity to park once and spend a morning, afternoon or evening enjoying the open spaces, visiting shops, having a meal, or attending a cultural event.

a. Product Type:

- **Retail/restaurant** component

Part of the commercial component of the mixed-use development should include retail and/or restaurant space(s). This retail may be neighborhood oriented, such as a coffee shop or bakery, or it may be destination retail, such as a farmers' market or sit-down restaurant. Based on the Town's Historic Mill District Survey (the HMD Survey), retail/restaurant and open space are the most highly favored components of the development, with the following types of retail uses identified (in descending order of desirability): food establishments; retail stores; grocery or market; professional office; personal service; fitness.

- **Housing** for a variety of age groups and income levels

The residential component of the mixed-use development should be multi-family and/or townhouse rather than single-family. At a minimum, new housing units should be affordable to a

mix of income levels such as workforce to market-rate and/or luxury, consistent with the Town's affordability requirement (15%) as set out in the Historic Mill District Zoning By-law. A permanent Affordable Housing Restriction shall be recorded with respect to the Affordable Housing Units. Housing could be available to seniors, millennials, and age groups in between. Based on the HMD Survey, a mix of rental and condominium units is favored over a housing component consisting solely of either condominiums or rental units.

- A project consisting wholly or primarily of any of the following is not desired by the Town: medical center or clinic; motel or hotel; commercial parking lot or garage; or office building. These uses can be included as part of the development but should not be the primary component.

b. Neighborhood Context and Character of Development:

- Responsive to the **context and character of the HMD. Development should serve as a catalyst for the HMD's revitalization**

The character of the Historic Mill District is critical to the Town. The historic mill buildings create a strong aesthetic fabric and architectural style. A proposed development should not only complement the context of the Historic Mill District, but also enhance and anchor it. The Town seeks a development that includes an outstanding design with iconic and memorable features and character.

- **Placemaking** – create a **Gateway Destination** rather than solely an access point for the station

The Town wants this site to serve as an attractive and vibrant destination for commuters, Town residents, and visitors from nearby communities. The development should have its own identity and branding and serve as a gateway for the Town of Andover, particularly to those arriving via commuter rail. An extensive community study related to placemaking in the HMD has been led by Gamble and Associates (see Appendix ____).

c. Linkages, networks, and circulation:

- Development that **connects to** the river and downtown

While the Town Yard site is centrally located between downtown (Main Street) and the Shawsheen River, connections between these points are limited. The proposal should address improvements to pedestrian, bicycle, and vehicular connections between those assets. With respect to vehicular circulation, a proposal must not impede, and should facilitate, traffic improvements recommended in the HMD Design Guidelines and the circulation plan prepared by DCi. Such vehicular circulation improvements may be achieved through a public-private partnership. Because public access to and within the Town Yard site for pedestrians, bicyclists, and vehicles is paramount to the community, proposals should expressly contemplate the inclusion of (i) roadways and sidewalks that will be potentially accepted as public ways or (ii) public way easements for the benefit of the Town.

- **Pedestrian and bicycle** friendly

Circulation to and within the site should accommodate pedestrians and bicyclists. There should be designated lanes for these users to travel safely within the development. Development should, where possible, facilitate pedestrian and bicycle traffic within the broader HMD, particularly to and from the downtown.

- Better **accessibility** to MBTA station

Presently, pedestrian access to the MBTA Commuter Rail is available on the Railroad Street side of the tracks only. Pedestrians arriving from the east side of the tracks can only cross at-grade at the intersection of Essex Street. A proposal should address access to the MBTA station from the development site, including an improved pedestrian experience in accessing the Commuter Rail Station. Further, there is currently no station building or protection from the elements for commuters waiting on the platform. Proposals may include solutions to address these challenges. However, since any improvements within MBTA property are wholly dependent on approval by the MBTA, the evaluation of proposals under this RFP will be limited to assessing connectivity enhancements that are within the control of the Town and the Selected Developer. All proposals should be consistent with any applicable requirements and policies of the MBTA relating to the development of land adjacent to or otherwise in proximity to MBTA right of ways (including, without limitation, the MBTA's "Design/Construction Review for Projects within the MBTA's Zone of Influence – A Guide for Owners, Developers and Contractors (ODCs)", included as Appendix []).

d. Community Spaces:

- Active, **programmable public open space** (green space, plaza, or similar for special events, performances, art, interactive installations, seating, etc.)

Inclusion of public outdoor, programmable space within the site is desired. Flexible space that can accommodate passive daily use and active special events and programming, with a mix of hardscape and landscape features, seating, and other amenities would address this objective. This space could allow for performances, art, or other interactive programs. This space should promote gathering. Any green space should be permanently restricted by conveyance to the Town or a nonprofit organization of a deed or permanent restriction.

- **Arts and culture** space – theater, entertainment

Arts and cultural space such as a traditional theater, gallery, music venue, maker space or other creative spaces that can strengthen Andover's identity as an arts destination would be responsive to this objective. These spaces may be indoor or outdoor and include family-friendly options as well as spaces targeting other age groups. Flexible spaces that can rotate among cultural uses, pop-up retail, civic uses, and others could qualify for consideration under this objective.

- The two types of community spaces described above should not be considered mutually exclusive. The Town seeks both open gathering places, as well as cultural venues.

e. Environmental Responsibility:

- **Environmentally conscious** development

Environmentally conscious development may be measured by LEED for Neighborhood Development (LEED ND) standards, including sustainable building standards and neighborhood pattern design standards. In addition, §§8.7.8(9) and (11) of the HMD Zoning By-law require energy efficiency, environmentally sensitive principles, and low-impact development (LID) design techniques such as pervious surfaces, rain gardens, and other stormwater management techniques.

Environmentally sensitive principles would include, but not be limited to, renewable energy generation; accommodations for electric vehicles as well as other alternative transportation modes; promotion of health and safety through design and maintenance of the built environment; planting of native species; promotion of the smart use of water, inside and out, to

reduce potable water consumption; and reducing the environmental consequences of construction and operation of buildings and infrastructure.

f. Design/Development:

- **Adherence to dimensional, design, and other requirements of the HMD Zoning By-law and the HMD Design Guidelines for the Rail Corridor.**

Proposers should follow both the HMD Zoning By-law (summarized above) and the HMD Design Guidelines (summarized below) when producing their design proposal.

DESIGN/DEVELOPMENT GUIDELINES

The following is a summary of the HMD Design Guidelines for the Rail Corridor (from page 62 of the Guidelines). Proposers should refer to the full text of the Guidelines, included as Appendix [___].

- | | | |
|----|----------------------|--|
| 1. | BUILDING HEIGHT: | 4-5 stories
Larger building volumes
Taper scale adjacent to existing residential areas |
| 2. | BUILDING MASSING | Higher building volumes adjacent to the rail
Step-backs to diminish the height adjacent to existing homes |
| 3. | PUBLIC INTERFACE | Transition zone between tracks and new development
Considerations for new transit platform
Series of public plazas |
| 4. | PARKING + ACCESS | Parking towards rail line
Utilize grade change for lower-level parking
Combine parking in structures or plinths |
| 5. | LINKAGES + NETWORKS | Improved access to MBTA station platforms
Ensure safe crossing of tracks |
| 6. | FACADE + MATERIALS | Materials that celebrate industrial past
Brick, steel, concrete |
| 7. | SIGNAGE + WAYFINDING | Pedestrian connection signage
Enhance wayfinding
Integration of signage into architecture of the building |

V. LAND DISPOSITION AGREEMENT

The Selected Developer will be required to negotiate and enter into a Land Disposition Agreement with the Town substantially in the form attached to this document in Appendix [___], within sixty days (60) days of its designation.

VI. SUBMISSION REQUIREMENTS

SUBMISSION TIMELINE

1. Schedule

	Time	Day	Date
Pre-Submission Meeting and Site Tour	10:30 a.m.	Tuesday	Date
Written Questions Due Date	5:00 p.m.	Friday	Date
Proposal Due Date	2:00 p.m.	Friday	Date
Proposal Opening	2:15 p.m.	Friday	Date
Oral Presentations by Invited Proposers	[time]	[day]	[date]
Announcement of Recommendation to Select Board	[time]	[day]	[date]

2. Pre-Submission Meeting and Site Tour

A Pre-Submission Meeting/Site Tour will be held at the Town Offices, at the date and time shown in Section VI.1 of this RFP. At the Pre-Submission Meeting, Proposers will sign-in to memorialize their attendance and receive instructions for the Site Tour. Thereafter, Proposers will be given a Site Tour of the Town Yard. After the Site Tour, Proposers will be invited to a meeting where further questions of the Town can be asked by the Proposers and the questions will be memorialized and posted on the RFP website.

If the time is changed, the new date and time will be posted on the Town of Andover website. Prospective Proposers are strongly encouraged to confirm their attendance in advance of the Pre-Submission Meeting and Site Tour with the Town by email at [_____]. This will be the only Site Tour provided by the Town.

3. Proposer Inquiries

Proposers may submit questions regarding this RFP to the Town of Andover. **All such requests for information or clarification of the intent and content of any provision of this RFP and any other questions from Proposers regarding this RFP must be submitted via email to [_____] by [time] on [date].** All questions will remain anonymous. The Town will post answers to questions, without any identifiers as to the source of the question, as an addendum to the RFP on the RFP website. No principal, employee or agent of any Proposer, or any person or firm which will participate in the preparation of the proposal or in the proposed development project, shall communicate in any manner about this RFP, or about the development of the Town Yard site, with a member of the Selection Committee, the Select Board, the Planning Board, any Town employee or any of its consultants or representatives (e.g., Stantec, etc.) except through written questions as described above. Any violation of this requirement shall be grounds for disqualification.

4. Town Requests for Clarification

Subsequent to receiving the Proposals, the Town may request clarifications of the Proposers' Proposals. The Town reserves the right to contact individual Proposer team members to clarify their roles and to request additional information.

5. Addenda

The Town of Andover shall make available to Proposers addenda to this RFP if, in its opinion, any terms and provisions of this RFP require clarification or interpretation. **Answers to Proposer inquiries will also be posted as addenda.** All addenda, if any, will be posted as an addendum to the RFP on Andover's website, no later than five (5) days prior to the deadline for submission of Proposals.

SUBMISSION REQUIREMENTS

A proposal shall be comprised of a sealed envelope or package labelled "ANDOVER TOWN YARD PROPOSAL" and bearing the name of the Proposer, containing three distinct components, each sealed within a separate envelope or package and labelled respectively as follows: (1) QUALIFICATIONS STATEMENT; (2) DEVELOPMENT PROPOSAL; (3) FINANCIAL ANALYSIS & PRICE PROPOSAL.

Within each envelope, the Proposer should provide 7 hard copies and 1 electronic copy of the submission in the form of a flash drive titled "Andover Town Yard Proposal_YourCompany". Proposals must be received by the Town of Andover by [DATE] and [TIME] at the following address:

[ADDRESS]

- a. **Transmittal Letter.** Qualifications Statements shall include a transmittal letter identifying the Proposer, the principal(s) or officer(s) authorized to execute documents on behalf of each entity which is part of the development team, as well as a contact person from the Proposer authorized to receive communications from the Selection Committee or the Town.
- b. **Proposer Qualifications and Experience.** Qualifications Statements must include resumes for key individuals including the Project Principal and Project Manager, and of key individuals from the design team or other consultants included in the proposal. It is expected that these individuals will work on the proposed Town Yard project should the team be selected. Resumes must describe the experience of the Proposer in the development of mixed-use projects of comparable size and scope to the proposed Town Yard project. The Qualifications Statement should highlight such projects in New England, if any. For each project description, Proposers should describe the specific role(s) of the Proposer in the development, the project size, project cost, project location, date of project opening, and current occupancy rate. The Qualifications Statement must also include the names and relevant experience of general contractor(s)/construction manager(s) which the Proposer anticipates engaging in connection with its proposed project and, to the extent then known, names of major subcontractors likely to be engaged in connection with the project.
- c. **Proposer Organizational Structure.** Qualifications Statements shall clearly identify each entity or individual that is a key member of the Proposer's team on this project and the roles to be played by each such team member. This can be included as an organizational chart and/or narrative format. If the Proposer is a joint venture, the Proposer must clearly identify, for each member of the joint venture, such member's share or interest in the financial or other benefits, risks or liabilities of the venture ("joint venture interest"). If a Proposer anticipates forming one or more entities which do not exist at the time of the proposal submission but which would be formed in order to carry out the Proposer's development functions in the event the Proposer is selected pursuant to this RFP, the Qualifications Statements shall disclose such to-be-formed entities and describe their structure.

- d. **Financial Capability of Proposer.** The Qualifications Statement shall include evidence of the financial capability of the Proposer, or other entity described in Paragraph c. above, to secure required financing. Such evidence may include financial statements attesting to the amount of working capital within the Proposer's control that is available for the project, documentation as to financing secured in connection with past projects of comparable size, letters of intent from financial institutions with respect to this project, bonding capacity, or other reliable evidence.
- e. **Disclosure of Bankruptcies, Foreclosures, Liens, and Litigation.** The Qualifications Statement shall disclose all bankruptcies, foreclosures, liens pending or adjudicated within the past five (5) years, and a list of all lawsuits in which the Proposer was a party since January 1, 2010 along with the docket number, names of all parties in the lawsuit, the Memorandum of Decision, the Judgment and result of any appeal.
- f. **Current Projects.** The Qualifications Statement shall include a list of current and suspended projects, including any project that (a) is currently under design or construction or has a permit application of any type pending; and any project that (b) has been paused or suspended or has not been completed for any reason, for which the Proposer sought within the last five (5) years any permit, variance, or zoning change on land under the Proposer's current control. For each project, the Proposer shall indicate the nature, location, scope, estimated cost, schedule (including dates of design completion, construction start, and substantial completion), current status of the project, and reasons for the pause, suspension, delay, or abandonment, if applicable.
- g. **References.** The Qualifications Statement shall include references and their contact information (including telephone number and e-mail address) identifying in what capacity and on what projects each such reference became familiar with the work of the Proposer or key team members. References shall include two from lenders and/or institutional equity investors and two from municipalities in which the project type described above in (b.) have been built.

2. DEVELOPMENT PROPOSAL: CONCEPTUAL PROGRAM AND PLAN

- a. **Executive Summary.** The Development Proposal shall include an Executive Summary providing a description of the proposed development, the Proposer's approach to the design and execution of the project, and key features of the proposal.
- b. **Conceptual Program and Plan.** Proposers shall submit a Conceptual Program and Plan (CPP) for the entire site. The CPP should include, but not be limited to, the elements of a pre-application "Concept Plan" required by §8.7.11(1) of the HMD Zoning By-law, including the footprints of all buildings, areas that will be developed as green or open spaces, and general site improvements.

The CPP shall also contain:

A certification that the Proposer, if selected, will apply for a Special Permit to develop the entire site pursuant to §8.7.3(2) of the HMD Zoning By-law. It is a condition of this disposition that all development on the site shall be undertaken in accordance with §8.7 of the Andover Zoning By-law applicable to the HMD Overlay District;

A narrative which addresses each of the relevant design objectives in §8.7.8 of the HMD Zoning By-law and each of the Design Guidelines for the Rail Corridor;

Conceptual drawings of the proposed development, including representations of buildings, site improvements, green and open spaces, and other notable features;

Deed, purchase-and-sale agreement, or purchase option for each Buxton Court, Pearson Street, Railroad Street, or North Main Street parcel, if any, which the Proposer has included in its CPP. By including any such parcel in the CPP, the Proposer agrees that all requirements set forth in this RFP shall apply to the proposed development area in its entirety, as if such additional parcels were located within the Town Yard site;

A plan and narrative delineating streets, sidewalks, pathways, and green/open spaces, addressing for each such component depicted on the plan a proposed legal mechanism or combination of such mechanisms (e.g., easement conveyed to the Town, open space or public use restriction, conveyance of green space to Town or non-profit land preservation organization, street acceptance, etc.) for ensuring and preserving public access, public use and passage rights.

Written materials allowing the Selection Committee to verify that the development will achieve a particular level of LEED certifiability.

Enumeration in narrative form of each waiver, if any, which the Proposer intends to request pursuant to §8.7.11(3)(a) of dimensional, design, or other requirements of the HMD Zoning By-law. In the alternative, the Proposer may certify that it will, if selected, request no waivers;

An illustrative site plan demonstrating how uses will be distributed on the site; and

A Table of Site Uses detailing the number of units and square footage for each building or space type; number of buildings by use; number of parking spaces; number and square footage of public spaces; etc.

Plans and elevations should be submitted on a scale of 1" = 40'.

3. FINANCIAL ANALYSIS AND PRICE PROPOSAL

- a. **Financial Analysis.** The Financial Analysis and Price Proposal shall contain a financial analysis that includes the proforma Development Costs (including design, construction, and financing costs) of the entire project and the projected income and expenses for the first ten years of occupancy, in sufficient detail to evaluate the reasonableness of the projections. If insufficient detail is provided, or the Proposer on request fails to supplement the information submitted, the proposal may be rejected.
- b. **Price Proposal.** The envelope marked FINANCIAL ANALYSIS AND PRICE PROPOSAL shall contain, on the form provided in this RFP, the Proposer's price offer for the purchase of the site. All price proposals shall provide for the payment of the full purchase price to the Town in immediately available funds at the closing pursuant to the Land Disposition Agreement. No price proposals will be considered until the Selection Committee has completed its evaluations and ranking of the Development Proposals.

4. PROPOSAL DEPOSIT

Each Proposer will be required to provide with its proposal a deposit of Thirty Thousand Dollars (\$30,000.00) (the "Proposal Deposit"). The Proposal Deposit shall be in the form of a bank, cashier's, or certified check drawn on a Massachusetts bank, without intervening endorsement, made payable to the "Town of Andover" and is due at the time that a Proposer submits its proposal. Proposal Deposits will be held by the Town in a segregated account and will be refunded (without interest) by the Town to all Proposers whose proposals are not selected, upon approval by the Select Board of the Selected Developer. Upon selection and approval by the Select Board, the Proposal Deposit submitted by the Selected Developer will be deemed fully earned and non-refundable by the Town, except as otherwise provided herein or in the Land Disposition Agreement. The Proposal Deposit shall be deemed to be

forfeited by the Selected Developer in the event that the Selected Developer either withdraws its proposal and/or fails to execute the Land Disposition Agreement within the required 60-day period.

VII. SELECTION

PROCESS

The Town Manager, pursuant to Section 3(d) of the Town of Andover Charter, will appoint the following persons to serve as the Selection Committee for this RFP.

- Two HMD Task Force representatives
- Three at-large residents
- Planning Director
- Town Manager's staff representative

The Selection Committee will review and evaluate proposals in accordance with the procedures set forth herein.

As described in Section VI above, Proposers must submit three separate envelopes (1) QUALIFICATIONS STATEMENT; (2) DEVELOPMENT PROPOSAL; and (3) FINANCIAL ANALYSIS & PRICE PROPOSAL.

Qualifications Statement Evaluation and Composite Rating. The Selection Committee will evaluate and rate Qualifications Statements as described below ([see pages 18-20]), and may reject proposals from Proposers the Selection Committee deems unqualified. Proposers ranked "Unacceptable" in any of the minimum requirements under the Qualifications of Proposer section will be considered not to have met the minimum qualification requirements, be disqualified and not have their Development Proposal and Financial Analysis & Price Proposal reviewed.

After determining the rating for each criterion, the Selection Committee shall specify a qualifications composite rating of Highly Advantageous, Advantageous, or Not Advantageous and the reasons for the composite rating. A composite rating of Highly Advantageous will be awarded if the Selection Committee determines, considering its ratings on each of the underlying evaluation criteria, that it has a high level of confidence that the Proposer can develop the Town Yard site, in accordance with its proposal, without significant risk to the Town. A composite rating of Advantageous will be awarded if the Selection Committee determines, considering its ratings on each of the underlying evaluation criteria, that it has reasonable confidence that the Proposer can develop the Town Yard site, in accordance with its proposal, without significant risk to the Town. A composite rating of Not Advantageous will be awarded if the Selection Committee determines that it does not have a sufficient level of confidence to award an Advantageous rating.

Development Proposal Evaluation. All proposals that meet minimum Proposer qualification requirements, and that satisfactorily provide requested supplemental materials, will be reviewed, evaluated, rated and ranked by the Selection Committee based on the Development Proposal selection criteria described below ([see pages 20-22]). At any phase of the evaluation process, the Selection Committee will reject a proposal it finds to be non-responsive, or has rated Unacceptable as to any evaluation criterion. Proposals will be reviewed and evaluated in each of the following categories: (a) Provision of Community Objectives, and (b) Adherence to Design Criteria/Vision.

The Selection Committee will conduct a preliminary evaluation to identify proposals which, on their face, the Selection Committee determines to be Not Advantageous, Unacceptable, or non-responsive. The Selection Committee will reject such proposals without further consideration.

After conducting the preliminary evaluation, the Selection Committee may elect, but is not required, to hear oral presentations. If the Selection Committee elects to hear oral presentations, each qualified Proposer whose

proposal has not been rejected will be invited to make an oral presentation to the Selection Committee to introduce key personnel and highlight distinguishing features of their proposal. Oral presentations will be open to the public, but not for public comment. Members of the Selection Committee may ask questions at the oral presentations. Each of the Proposers' participants in its oral presentation is expected to be responsible for the work and active on the project if selected. Invitations to make an oral presentation will provide further instructions as to the time, place, duration, and topics of the presentations requested by the Selection Committee with respect to the specific proposal.

Composite rating for Development Proposal. After evaluating each proposal in accordance with the selection criteria, and after applying the composite rating for the Qualifications Statement as further explained below, the Selection Committee will specify in writing a single composite rating for each Development Proposal (Highly Advantageous, Advantageous, Not Advantageous, Unacceptable) and the reasons for the composite rating.

In determining a composite rating for a Development Proposal prior to considering the Financial Analysis & Price Proposals, the Selection Committee will be guided by the following rules:

1. No Development Proposal will receive a composite rating of "Highly Advantageous" unless it has received ratings of "Highly Advantageous" on a majority of the evaluation criteria.
2. No Development Proposal will receive a composite rating of "Advantageous" unless it has received ratings of "Advantageous" or better on a majority of the evaluation criteria.
3. A Development Proposal shall receive a composite rating of "Not Advantageous" if it has received ratings of "Not Advantageous" on three or more evaluation criteria, regardless of the rating received on the remaining evaluation criteria. The Selection Committee may specify a composite rating of "Not Advantageous" if the Development Proposal receives a rating of "Not Advantageous" on any criterion. No Development Proposal will receive a composite rating higher than the highest rating it receives on any evaluation criterion or lower than the lowest rating it receives on any evaluation criterion.

In determining the composite rating for a Development Proposal, the Selection Committee may take account of an Advantageous or Not Advantageous composite Qualifications Statement rating, if the Selection Committee determines that in its judgment such rating entails a lower level of confidence in the Proposer's capacity to deliver on its proposal, in which case the Selection Committee may reduce the composite rating of the Development Proposal and specify its reasons for so doing. The composite rating previously determined for each Qualifications Statement will be applied to the evaluation of the Development Proposal as follows:

- If the Proposer has received a Highly Advantageous qualifications rating, the rating will not affect the rating or ranking of the Development Proposal.
- If the Proposer has received a qualifications composite rating of Advantageous or Not Advantageous, the rating or ranking of the Development Proposal may be negatively affected, based on the Selection Committee's determination of the degree to which the underlying reasons for the Advantageous or Not Advantageous rating warrant a lower level of confidence in the Proposer's capacity to deliver on its proposal. Based on a Not Advantageous rating, the Selection Committee may determine that its lower level of confidence is such as to warrant rejection of the proposal.

Ranking. The Selection Committee will rank the proposals in order of their advantageousness to the Town, and specify reasons for their ranking. Proposals may be ranked as equal to one another (i.e., tied for placement in the ranking). In determining the ranking for a proposal, the Selection Committee may take account of an Advantageous or Not Advantageous Qualifications Statement rating, if the Selection Committee determines that in its judgment such rating entails a lower level of confidence in the Proposer's capacity to deliver on its proposal.

Conditional ratings and rankings. When determining the Development Proposal composite rating and the ranking of a proposal, the Selection Committee shall specify in writing (a) revisions, if any, to the CPP and other elements of the proposal, and (b) a recommended increase, if any, in the proposed price which should be obtained by negotiation prior to executing a Land Disposition Agreement with the Proposer, and may condition the rating or ranking of the proposal on successful negotiation of the revisions specified, the recommended price increase, or both.

Financial Analysis & Price Proposal. Upon completion of the evaluation and ranking of Development Proposals, the Selection Committee will consider the Financial Analysis & Price Proposals.

The Financial Analyses will be reviewed before consideration of the Price Proposals. The Financial Analysis of each Proposer will be reviewed to ensure feasibility of the proposal. If a proposal is determined to be likely infeasible, it may be rejected, and the ranking of proposals will be adjusted accordingly.

The Selection Committee will then determine the most advantageous proposal from a responsible and responsive Proposer¹, taking into consideration price and the evaluation criteria set forth in this RFP ([see page 23]).

In making this determination, the Selection Committee will be guided by the following rules:

1. If the Proposer of the highest-ranked proposal has offered the highest price, that proposal will be deemed the most advantageous.
2. If the highest price has been offered by a Proposer whose proposal is not the highest-ranked, then the Selection Committee shall, starting with the highest-ranked proposal and thereafter in descending rank order, consider each successive proposal, taking into consideration price and the evaluation criteria, to determine which proposal is the most advantageous. As to each proposal so considered, the Selection Committee shall specify in writing its reasons for determining that such proposal is or is not the most advantageous.
3. In determining which proposal is most advantageous, the Selection Committee shall not recommend and need not further consider any proposal that has been ranked equal to or lower than the proposal for which the highest price has been offered.

Selection Committee Recommendation

The Selection Committee will recommend to the Select Board that the Town enter into the Land Disposition Agreement with the Proposer determined by the Selection Committee to have submitted the most advantageous proposal. The Selection Committee may elect instead to provisionally recommend a Proposer to the Select Board, conditioned upon the Proposer agreeing to the specific revisions to the CPP and other elements of the proposal, an increase in the proposed price, or both, as identified by the Selection Committee in writing to the Select Board. Alternatively, the Selection Committee may recommend that the Select Board make a determination from two or more equally advantageous proposals, or that all proposals be rejected in the best interests of the Town.

The Select Board may accept the Selection Committee's recommendation; request the Selection Committee to conduct further evaluations; reject all proposals if the Select Board determines that doing so is in the best interests of the Town; or make a determination, in reliance upon the Selection Committee's ratings and ranking, that a different proposal is the most advantageous proposal from a responsible and responsive Proposer, taking into consideration price and the evaluation criteria set forth in this RFP.

¹ "Responsible and responsive Proposer" as used herein means a Proposer who (a) has the capability to perform fully the requirements of this RFP and the Land Disposition Agreement, and the integrity and reliability which assures good faith performance, as determined by the Selection Committee pursuant to the selection process in this RFP; and (b) has submitted a proposal which conforms in all respects to this RFP.

If the Select Board accepts the Selection Committee's recommendation as to a proposal with respect to which the Selection Committee recommends negotiating specific revisions to the CPP and other elements of the proposal and/or an increase in the proposed price, the Select Board may condition an award on successful negotiation of the specified revisions and/or price increase prior to the execution of the Land Disposition Agreement. In authorizing such negotiations, the Select Board will rely on the Town Manager to conduct the negotiations. If the Select Board, acting through the Town Manager, is unable to successfully negotiate the specified revisions and/or price increase with the Proposer which has been provisionally recommended by the Selection Committee within thirty (30) days of the Selection Committee making such recommendation, then the Select Board may elect either to continue such negotiations or to proceed in accordance with the provisions of the previous paragraph.

SELECTION CRITERIA: QUALIFICATIONS OF PROPOSER

The Selection Committee will conduct an initial review of Qualifications Statements and will deem Unacceptable and reject any which do not meet the following **minimum requirements**:

1. **Financing.** Demonstrated experience financing at least three mixed-use real estate projects of a size and scope comparable to the proposed Town Yard project, or demonstrated experience obtaining financial commitments for such projects. The Proposer must demonstrate cash reserves or line of credit of not less than \$3 million and financial commitments, capacity to secure financing, and/or bonding capacity to complete the development of the Town Yard site in a timely fashion as required by the Land Disposition Agreement. In addition, the Selection Committee will reject Qualifications Statements based on incomplete financial information, or evidence of financial instability or unreliability.
2. **Project development.** Demonstrated record of successfully developing three mixed-use real estate projects of comparable size and scope to the proposed Town Yard project. In addition, the Selection Committee may reject Qualifications Statements based on incomplete information regarding projects or team members.
3. **Business history.** The Proposer, in substantially its current form of business organization, or as JV partner must have been in the commercial real estate development business for at least the past seven (7) years.
4. **Qualifications and experience of key personnel.** The Principal or Principals in charge, and the Lead Architect, shall each have not less than 10 years of experience, and the Project Manager and all other key personnel shall each have not less than seven (7) years of experience, in their respective areas of responsibility, and the Project Manager shall be a current employee of the Proposer (or, if the Proposer is a joint venture, of a member of the joint venture).

If a Proposer is a partnership or joint venture, all partners or members of the joint venture must meet the minimum standards stated in criteria (2) and (3) above regardless of the joint venture interest division. The minimum standards stated in criterion (1) above must be met by the partnership or joint venture. If the Selected Developer is a partnership or joint venture, the Land Disposition Agreement with the Town will provide that all partners or venturers thereof will be jointly and severally liable for the Proposer's obligations under the LDA.

The Selection Committee will evaluate Qualifications Statements which appear to meet the foregoing minimum requirements, and shall specify in writing a rating of Highly Advantageous, Advantageous, or Not Advantageous for each of the following criteria, and the reasons for the rating.

In the course of conducting its evaluation of the Qualifications Statements, the Selection Committee may request a Proposer to submit further information reasonably related to any criterion. Such request shall be in writing or via electronic mail, and shall set a reasonable deadline for submitting the information. The Selection Committee may disqualify a Proposer who fails to submit the requested information.

Evaluation Criteria. The Proposer's qualifications will be evaluated based on the following criteria:

- a. Comparable experience of the Proposer (Project Examples of the Proposer).** The Selection Committee will rate highly Proposers which have successfully developed mixed-use real estate projects, including projects in New England, most closely similar in size, duration, complexity and sensitivity to the proposed Town Yard project utilizing in key roles the key personnel and joint venturers (if any) identified in the Qualifications Statement.

"Highly Advantageous" if the Selection Committee finds that relevant projects identified by the Proposer as having been completed within the last 10 years are excellent in design and construction, and have achieved at least 90% occupancy; and that the Proposer has successfully developed one or more projects closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP.

"Advantageous" if the Selection Committee finds that relevant projects identified by the Proposer as having been completed within the last 10 years are excellent in design and construction, and have achieved at least 90% occupancy; that no single project undertaken by the Proposer is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP, but that, taken together, the projects identified by the Proposer demonstrate a capacity to successfully undertake the development sought by this RFP.

"Not Advantageous" if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

- b. Qualifications and experience of key personnel.** The Selection Committee will rate highly Proposers whose key personnel have demonstrated extensive experience in successfully completing projects most closely similar in size, duration, complexity and sensitivity to the proposed Town Yard project, performing roles and responsibilities similar to the roles and responsibilities proposed for such key personnel in the Qualifications Statement. Key personnel include, at minimum, Principal-in-Charge, Project Manager, and Lead Architect

"Highly Advantageous" if the Selection Committee finds that all key personnel are highly experienced, and have each achieved excellent results.

"Advantageous" if the Selection Committee finds that not all key personnel meet the requirements for a rating of Highly Advantageous, but that nevertheless the Selection Committee finds that, taken together, the experience levels of key personnel demonstrate a capacity to successfully undertake the development sought by this RFP.

"Not Advantageous" if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

- c. Past performance/references of the Proposer, key personnel and joint ventures, if applicable.** The Selection Committee will rate highly Proposers (including their key personnel) which, in reference interviews, receive strongly positive and authoritative references regarding (i) compliance with the terms of their contractual obligations to municipalities and to lenders; (ii) demonstrated ability to effectively and professionally design, construct, and manage major mixed-use real estate development projects, including completed projects of high quality; (iii) cooperation and coordination with the owner and other project participants; and (iv) minimization of claims and disputes. The

Selection Committee will also take account of the Proposer's track record of timely prosecution and completion of recent and current projects.

"Highly Advantageous" if Proposers receive uniformly positive and authoritative references and demonstrate a record of timely prosecution and completion of recent and current projects.

"Advantageous" if Proposers generally receive positive references and demonstrate a record of timely prosecution and completion of recent and current projects, if the Selection Committee finds that, taken together, the references and record of performance on current and recent projects are indicative of a capacity to complete the proposed Town Yard project effectively and professionally without significant risk to the Town's interests.

"Not Advantageous" if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

d. Qualifications, Experience and Quality of Design Firms working on the Project (Project Examples of Design Firm)

The Selection Committee will rate highly Proposers whose design firms/teams have designed projects, including projects in New England, similar in size, complexity and sensitivity to the proposed Town Yard project.

"Highly Advantageous" if the Selection Committee finds that two or more relevant projects identified by the Proposer and attributable to the design firm are excellent in design, and that at least one such project is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP.

"Advantageous" if the Selection Committee finds that two or more relevant projects identified by the Proposer and attributable to the design firm are excellent in design; that no single project designed by the design firm is closely similar to the historically oriented, environmentally sensitive and architecturally outstanding development sought by this RFP, but that, taken together, the projects identified by the Proposer and attributable to the design firm demonstrate a capacity to successfully design the development sought by this RFP.

"Not Advantageous" if the Selection Committee finds that the requirements for an Advantageous rating have not been met.

SELECTION CRITERIA: DEVELOPMENT PROPOSAL

After the Selection Committee has completed its review and rating of Qualification Statements, the Development Proposals, except for those previously rejected, shall be considered and shall be evaluated. The evaluations shall specify a rating, and the reasons for the rating, for each of the following criteria:

Provision of Community Planning Objectives

a. Neighborhood Context and Character of Development:

"Highly Advantageous": Considered as a whole, the development described in the CPP would, in the judgment of the Selection Committee, be an attractive and vibrant destination for residents and visitors, with iconic and memorable features and character celebrating Andover's history and distinguishing the site as a keystone of the Historic Mill District, draw upon the Gamble place-making plan, and serve as a catalyst for the revitalization of the HMD.

“Advantageous”: The development would be an attractive destination for residents and visitors, but without any particularly iconic or memorable features.

“Not Advantageous”: The development would likely draw residents and/or visitors, but would offer little to distinguish it as the keystone of a uniquely Andover historic district.

“Unacceptable”: Does not qualify for a rating of “Not Advantageous.”

b. Linkages, networks, and circulation:

Pedestrian and Bicycle Experience, Connectivity to Surrounding Areas (including Historic Mill District, Main Street, and the Shawsheen River) and Accessibility to MBTA Station

“Highly Advantageous”: Project design provides public access and improves the pedestrian and bicycle experience, connectivity to the Historic Mill District, Main Street, and the Shawsheen River, and connectivity to, on, and around the site and improves connection to the MBTA stop.

“Unacceptable”: Project design makes no improvements to connections to surrounding areas or MBTA station.

Traffic Circulation

“Highly Advantageous”: The CPP provides public access and is fully consistent with the recommended traffic improvement plan set forth in the HMD Design Guidelines (see Appendix [__]) and the traffic and circulation plan prepared by DCi, or in the judgment of the Selection Committee provides an alternative of equal or superior benefit to the Town.

“Not Advantageous”: Does not qualify for a rating of “Highly Advantageous” but, in the judgment of the selection committee, would not impede the execution of the traffic improvement plan outside the boundaries of the site.

“Unacceptable”: Does not qualify for a rating of “Not Advantageous”.

c. Community Spaces

Spaces

“Highly Advantageous”: Provides significant indoor and/or outdoor space for arts, cultural events, and/or performances. Such space may include, but is not limited to, accommodation for displays of sculpture, arts festivals, galleries, musical and/or dramatic performances, etc. Additionally, dedicates significant open space to active and/or passive enjoyment, with such amenities as outdoor plazas, gardens, fountains, play space, benches, etc.

“Advantageous”: Provides some indoor and/or outdoor space for arts, cultural events, and/or performances, and dedicates significant open space to active and/or passive enjoyment.

“Not Advantageous”: Does not qualify for a rating of “Advantageous”.

Public Access

"Advantageous": Comprehensively ensures and preserves public access to and over streets, sidewalks, pedestrian/bicycle pathways, and outdoor community space, and ensures preservation of outdoor community spaces, through appropriate and effective legal mechanisms.

"Unacceptable": Does not qualify for a rating of "Advantageous".

d. Product Type

"Highly Advantageous": The CPP includes significant components of all of the following categories of permitted uses: multifamily dwellings; retail sales establishment; and restaurants.

"Not Advantageous": Does not qualify for a rating of "Highly Advantageous".

"Unacceptable": Consists wholly or predominantly of any of the following uses or a combination thereof: educational use, medical center or clinic; motel or hotel; business, professional or administrative office; private club; commercial parking lot or garage. This rating will be given even if the CPP contains significant components that would otherwise qualify as High Advantageous.

e. Environmental Responsibility:

"Highly Advantageous": Neighborhood and building development meet the requirements for LEED ND Gold or higher certification.² In addition, fulfills the requirements of Design Objectives §8.7.8(9) ("incorporates energy efficient and environmentally sensitive principles") and §8.7.8(11) ("incorporates low-impact development (LID) design techniques").

"Advantageous": The neighborhood and building development meet the requirements for LEED ND Silver certification. In addition, the design fulfills the requirements of Design Objectives §8.7.8(9) ("incorporates energy efficient and environmentally sensitive principles") and §8.7.8(11) ("incorporates low-impact development (LID) design techniques").

"Not Advantageous": Fulfills the requirements of Design Objective §8.7.8(9) ("incorporates energy efficient and environmentally sensitive principles") and §8.7.8(11) ("incorporates low-impact development (LID) design techniques") but the design does not meet the requirements for LEED ND certification.

"Unacceptable": Does not fulfill the requirements of Design Objectives §8.7.8(9) and (11).

Adherence to Design Objectives

a. Adherence to all dimensional, design and other requirements of the HMD Zoning By-law

"Highly Advantageous" The Proposer certifies and demonstrates that its CPP can be executed without the need for waivers and certifies that it will seek no waivers from the Planning Board or the Zoning Board of Appeals.

"Advantageous": The Selection Committee finds that, if one or more of the enumerated waivers is allowed by the Planning Board, the project would nonetheless be consistent with the overall purposes and objectives of the HMD, and further finds that the necessary waivers will allow the project to achieve a high quality design incorporating a desired mix of open space, affordability, a mix of uses, and/or physical character.

² The Selection Committee may give favorable consideration to Proposals that entail LEED certification in addition to LEED certifiability.

“Not Advantageous”: The Selection Committee finds that the proposal does not qualify for a rating of “Advantageous.”

b. Adherence to the HMD Design Guidelines for the Rail Corridor

“Highly Advantageous”: The Selection Committee finds that its CPP is fully consistent with the HMD Design Guidelines for the Rail Corridor.

“Advantageous”: The Selection Committee finds that the proposal is generally consistent with the Design Guidelines for the Rail Corridor, with deviations that do not significantly detract from the intent of the guidelines.

“Not Advantageous”: The Selection Committee finds that the proposal does not qualify for a rating of “Advantageous”.

SELECTION CRITERIA: FINANCIAL ANALYSIS AND PRICE PROPOSAL

- a. Financial Analysis.** The proforma analysis will be reviewed and confirmed by the Town’s consultants to ensure that the proposal provides evidence of strong financial and market feasibility and that there appears to be a high likelihood of obtaining key permits. If the analysis as reviewed by the Town’s consultants provides evidence of limited or no financial and/or market feasibility, and/or there appears to be little likelihood of obtaining key permits, the proposal will be deemed Unacceptable.
- b. Price Proposal**

RULE FOR AWARD

The most advantageous proposal from a responsible and responsive Proposer will be selected, taking into consideration price and the evaluation criteria set forth in this RFP.

POST-SELECTION

Selection Deposit

The Town will require the Selected Developer to provide a deposit (the “Selection Deposit”) in the amount of \$50,000 within three (3) business days of notification that it has been designated as the Selected Developer. The Selection Deposit shall be in the form of a wire transfer of immediately available funds to an account designated by the Town of Andover. Upon receipt by the Town, the Selection Deposit will be deemed fully earned and non-refundable by the Town, except as otherwise provided herein and in the Land Disposition Agreement. The Selection Deposit will be applied (without interest) to the Purchase Price due at the closing pursuant to the Land Disposition Agreement. Otherwise, the Selection Deposit shall be nonrefundable to the Selected Developer unless it terminates the Land Disposition Agreement]by reason of the default by the Town thereunder, in which case the Town shall refund the Selection Deposit (without interest) to the Selected Developer. The entire Selection Deposit shall be deemed to be forfeited by the Selected Developer in the event that the Selected Developer withdraws its proposal and/or fails to negotiate in good faith and execute the Land Disposition Agreement within the required 60-day period (see immediately below).

Land Disposition Agreement Execution

Upon the Town's notifying the Selected Developer that it has been designated the Selected Developer, the Town and the Selected Developer will without delay negotiate the final terms of the Land Disposition Agreement. Unless otherwise provided by written consent of the Town, the Land Disposition Agreement will be executed within [60] days of the Selected Developer receiving this notification from the Town. Upon execution of the Land Disposition Agreement, the Selected Developer shall provide an additional deposit (the "Execution Deposit") in the amount of \$200,000 in the form of a wire transfer of immediately available funds to an account designated by the Town of Andover. Upon receipt by the Town, the Execution Deposit will be deemed fully earned and non-refundable by the Town, except as otherwise provided herein and in the Land Disposition Agreement. The Execution Deposit will be applied (without interest) to the Purchase Price due at the closing pursuant to the Land Disposition Agreement. Otherwise, the Execution Deposit shall be nonrefundable to the Selected Developer unless it terminates the Land Development Disposition Agreement by reason of the default by the Town of Andover thereunder, in which case the Town shall refund the Execution Deposit (without interest) to the Selected Developer. The entire Execution Deposit shall be deemed to be forfeited by the Selected Developer in the event that the Selected Developer withdraws its permit application(s) from the Planning Board and/or fails to act in good faith during the permitting process.

VIII. RESERVATIONS AND CONDITIONS

A. General Reservations

1. The Town makes no representations or warranties as to the accuracy, correctness, currency, and/or completeness of any and all of the information provided in or furnished pursuant to this RFP, or that such information accurately represents the conditions that would be encountered on the site and in the vicinity, now or in the future.
2. The Town reserves the right to extend, suspend, supplement, withdraw, or amend this RFP or this RFP selection process or schedule for any reason or for no reason at any time. The Town shall not be liable to any potential or actual Proposer, or to the Selected Developer, for costs or expenses incurred by them as a result of the issuance, extension, supplementation, withdrawal, or amendment of this RFP or the process initiated hereby.
3. The Town reserves the right to reject any proposal that does not include all requested components, that is not submitted in conformance with this RFP or any amendments thereto, or that contains responses to the submission requirements set forth in this RFP which are not satisfactory to the Town, or to reject any or all proposals, in its sole discretion, for any reason or for no reason. The Town further reserves the right to waive or decline to waive irregularities in any proposal when it determines that it is in the Town's best interest to do so, and to waive any defects in this RFP submission process when it determines such defects are insubstantial or non-substantive.
4. During the selection process, the Town reserves the following rights: to negotiate with one or more Proposers; to select a back-up Proposer; to waive portions of the RFP; to waive any informalities in proposals; to reject any or all proposals; and to issue a new Request for Proposals, for any reason deemed appropriate by the Selection Committee.

5. In the event of any default by the Selected Developer hereunder, then in addition to the Town's other rights hereunder, the Town may proceed to select another Proposer as the Selected Developer, terminate this RFP, or begin a new selection process.
6. The Town reserves the right to discontinue its selection of any Proposer prior to the execution of the Land Disposition Agreement. The Town shall not be liable to any such Proposer for costs or expenses incurred by it as a result of this discontinuance.
7. The Town reserves the right to seek additional information from any or all Proposers. Until such time as the Town has received proposals in response to this RFP and has received any and all additional information and/or revised proposals that the Town may request pursuant to this RFP, such proposals shall not be deemed to be complete.
8. If any matter or circumstance under this RFP requires the consent or approval of the Town or that such matter be satisfactory to the Town, then same may be granted, withheld, denied or conditioned by the Town in the exercise of its sole and absolute discretion.
9. If the Selected Developer fails to execute the Land Disposition Agreement within the required ____-day period, or thereafter fails to close the transaction within the specified time period (other than by reason of a default thereunder by the Town), then the Town shall have the right, in addition to its rights with respect to the deposits paid by the Developer, to designate another Proposer as the Selected Developer, to re-advertise the site for sale or other disposition, to discontinue the disposition altogether, or otherwise to deal with the property in the Town's sole and absolute discretion.

B. Severability

If for any reason, any section or provision of this RFP or any addendum to it is determined to be illegal, invalid, or unenforceable under present or future laws or regulations, the remainder of this RFP shall not be affected thereby.

C. Conflict of Interest, Collusion

1. By submitting a proposal under this RFP, a Proposer certifies that no relationship exists between the Proposer and the Town or any officer, employee, or agent of the Town that constitutes a conflict of interest or that may be adverse to the Town.
2. By submitting a proposal under this RFP, a Proposer certifies that it has not acted in collusion with any other Proposer or other entity doing business with the Town in a way that would constitute unfair competition or that may be adverse to the Town.
3. Note that "Proposer" as used herein means the Proposer; any joint venturer of the Proposer; any director, principal, officer, partner, owner of an equity interest in the Proposer, employee, agent or representative of the Proposer; or any partnership, corporation or other entity with which any of the foregoing is or has been affiliated.

D. Confidentiality

1. Proposers should assume that all materials submitted in response to this RFP will be open to the public. To the extent allowed by Massachusetts and federal public records laws, the Town will make reasonable efforts not to disclose or make public any pages of a proposal which the Proposer has stamped or imprinted as "confidential." Confidential data will be limited to confidential financial information concerning the Proposer's organization. The Town assumes no liability for disclosure or use of any information or data.
2. All information submitted in response to this RFP becomes the sole property of the Town, with the exception of confidential financial information concerning the Proposer or its financial partners. No Proposer has proprietary rights to any ideas or materials submitted in its proposal.

E. Proposer's Responsibilities

1. All costs and expenses of every kind and nature paid or incurred by a Proposer in connection with responding to this RFP, including, without limitation, fees and costs of attorneys, consultants and contractors; title examination and title insurance costs; survey and engineering fees and expenses; and design fees and expenses, shall be the sole cost and expense of the Proposer, and the Town shall have no responsibility therefor. In no event shall the Town be responsible for payment of any brokerage, finders or similar commissions or fees in connection with the disposition of the property which is the subject of this RFP.
2. Proposers shall thoroughly familiarize themselves with the provisions of this RFP. Upon receipt of this RFP, each Proposer shall examine this RFP for missing or partially blank pages due to mechanical printing or collating errors. It shall be the Proposer's responsibility to identify and procure any missing pages.
3. Proposers shall be entirely responsible for reviewing and verifying all zoning and other regulatory requirements, title, environmental, engineering, and other information contained in or furnished pursuant to this RFP regarding the Property. Any information contained in or furnished pursuant to this RFP is included (or made available) as a matter of convenience only and the Town shall not be liable for any mistakes, costs, expenses, damages, or other consequences arising from use of or reliance on this information in any respect, and each Proposer, by submitting a proposal to the Town in response to this RFP, expressly agrees that it shall not hold the Town or any of its officers, agents, contractors, consultants, attorneys, or any third party liable or responsible therefor in any manner whatsoever.

IX. APPENDICES & FORMS

- A. Site Plan
- B. Other Plans – new survey?
- C. Title Insurance Commitment; Order of Taking (when recorded)
- D. Environmental Materials

- C. Pertinent Planning Documents (see Sec. IV Planning Commitments)
- D. Land Disposition Agreement
- E. Proposal Forms (certifications as appropriate to each of the three submissions; form for submitting the price proposal; disclosure of beneficial interest form for M.G.L. c. 7C §38 for selected Developer; if there is to be anything like a bid bond, performance bond or deposit, forms for each; etc.)

X. SCHEDULES AND FIGURES

DRAFT

LAND DISPOSITION AGREEMENT

By and Between

THE TOWN OF ANDOVER

and

Dated: _____

**Town Yard Property
Buxton Court and Lewis Street
Andover, Massachusetts**

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LAND DISPOSITION AGREEMENT

PARTIES

THIS LAND DISPOSITION AGREEMENT (as the same may hereafter be amended in accordance with the provisions hereof, this “**Agreement**”), dated as of this ____ day of _____, 20____, is made by and between the Town of Andover, a Massachusetts municipal corporation, acting by and through its Select Board, with an address of 36 Bartlet Street, Andover, MA 01810 (hereinafter referred to as the “**Town**” or “**Seller**”), and _____, (hereinafter referred to as the “**Developer**”).

RECITALS

WHEREAS, the Town, as owner of a certain parcel of land situated, off of Lewis Street and Buxton Court in Andover, Massachusetts, upon which is located the former Town Yard, as shown on the plan entitled “_____”, and more particularly described in Exhibit A attached hereto and made a part hereof (the “**Land**”) (and, together with all buildings and other improvements situated thereon and to be conveyed to the Developer along with the Land, collectively, the “**Property**”), issued a Request for Proposals dated _____, 2020 (together with all Addenda thereto issued by the Town, collectively, the “**RFP**”), for the disposition of Property.

WHEREAS, the Developer submitted a proposal dated _____, 2020 in response to the RFP (the “**Proposal**”), a copy of which Proposal is on file with the Town Purchasing Agent and portions of which Proposal are attached hereto as Exhibit B and made a part hereof, which includes a Conceptual Program and Plan (as the same may be amended with the approval of the Select Board prior to the execution of this Agreement, the “**CPP**”) for the Property [*and the Private Property – if applicable*], and calls for the Developer to demolish the building(s) located upon the Property [*and the Private Property – if applicable*], and construct on the Property [*and the Private Property – if applicable*] a project consisting of _____, as more particularly described in the Proposal, the CPP and this Agreement (and as will be more fully described in the “Approved Plans” and the “Approved Construction Documents” (as such terms are hereinafter defined) prepared by the Developer and approved by the Seller pursuant to this Agreement, the “**Project**”);

*[If applicable - WHEREAS, the Proposal provides for the acquisition of title by the Developer to, and the inclusion in the Project of, the following parcels of privately-owned land: _____ (collectively, the “**Private Property**”);]*

WHEREAS, the Town, for consideration of _____ Dollars, and other consideration as set forth in this Agreement, agrees to sell, and the Developer agrees to buy, the Property, on the terms and conditions set forth in this Agreement;

WHEREAS, an integral portion of the consideration for the Property is that the Developer be legally obligated to complete the Project; and

WHEREAS, the Developer, in consideration for the Property, agrees to develop the Property *[and the Private Property – if applicable]*, and undertake all the work that is required to be done under this Agreement to construct, develop and complete the Project (the “**Work**”).

NOW, THEREFORE, each of the parties hereto for and in consideration of the promises and mutual obligations herein contained, does hereby covenant and agree with the other as follows:

ARTICLE 1

RECITALS

The Recitals stated above are true and accurate and are incorporated herein by reference.

ARTICLE 2

AGREEMENT TO PURCHASE AND SELL

The Town agrees to sell the Property, and the Developer agrees to purchase and develop the Property and undertake the Project, subject to the terms and conditions set forth in this Agreement.

Section 2.01 Purchase Price; Deposits.

(a) The Developer shall pay to the Town the sum of _____ Dollars (\$_____) (the “**Purchase Price**”) for the Property, of which (i) Thirty Thousand (\$30,000.00) Dollars has previously been paid to the Town as a “Proposal Deposit” pursuant to the RFP, (ii) Fifty Thousand (\$50,000.00) Dollars has previously been paid to the Town as a “Selection Deposit” pursuant to the RFP, and (iii) Two Hundred Thousand (\$200,000.00) Dollars has this day been paid to the Town as an “Execution Deposit” pursuant to the RFP (collectively, the “**Deposits**”), which will be held and disbursed in accordance with the terms of this Agreement. The balance of the Purchase Price shall be paid in full at the time of the “Closing” (as hereinafter defined) by wire transfer of immediately available funds to an account designated by the Town in writing.

(b) The Deposits shall be held by the Town, may be commingled with other funds of the Town, and shall not accrue interest.

Section 2.02 Deed.

The Property is to be conveyed by a good and sufficient quitclaim deed in the form attached hereto as Exhibit C and made a part hereof (the “**Deed**”), running to the Developer, which shall convey a good and clear record and marketable title thereto, free from encumbrances, except the following (collectively, the “**Permitted Exceptions**”);

- a. Provisions of existing building, zoning, subdivision, environmental and all other Laws enacted by any governmental authority prior to the “Closing Date” (as hereinafter defined);

- b. Such real estate taxes for the fiscal year ending June 30, 20__ as are not due and payable on the date of the delivery of the Deed (if any);
- c. Any liens for municipal betterments assessed after the date of this Agreement;
- d. All easements, restrictions and other matters of record, including, without limitation, those matters listed in Schedule B, Section 2 of Commonwealth Land Title Insurance Company Commitment Number [19-54668], a copy of which is attached hereto as Exhibit D and made a part hereof;
- e. Matters that would be disclosed by an accurate ALTA/NSPS survey of the Property (regardless of whether the Developer obtains such a survey);
- f. The standard printed exceptions contained in the most recent edition of the ALTA title insurance policy;
- g. All matters of title or affecting title which constitute "Permitted Exceptions" in accordance with the provisions of Section 2.05 below;
- h. The provisions of the Deed and any document recorded with the Deed as part of the closing of the sale transaction contemplated by this Agreement; and
- i. The provisions of this Agreement.

Section 2.03 Pre-Closing and Development Schedule.

The Developer shall be solely responsible, at its sole cost and expense, for the permitting, design, financing and construction of the Project, all as provided in this Agreement. The date on which the Developer has received all "Approvals" (as hereinafter defined) required to construct the Project, with all appeal periods relating to such Approvals having expired without any appeal having been filed (or, if any such appeal has been filed, the final disposition of such appeal by settlement or final non-appealable judgment) is referred to in this Agreement as the "**Approvals Issuance Date**".

The Developer agrees to apply for and pursue the Approvals, obtain financing for the Project, and take such other actions with respect to the construction of the Project as are set forth below according to the following schedule, unless otherwise agreed in writing by the Seller and the Developer:

<u>Events Prior to Closing</u>	<u>Date</u>
Execution of this Agreement	_____
Complete Due Diligence and Title Search	_____
Submit Plans for Select Board Approval	_____
Begin Filing for Other Approvals	_____

Submit Application for Special Permit to Planning Board	_____
Target Approvals Issuance Date	_____
Obtain Financing Commitment	_____
Closing Date	_____
Outside Closing Date	_____
<u>Events After Closing</u>	
Commence Construction	_____
Complete Construction	_____

If the Developer fails to meet any of the milestone dates set forth above with respect to obtaining Approvals, the provisions of Section 2.07(b) hereof shall apply. If the Developer fails to meet any of the milestone dates set forth above with respect to any other actions required to be taken prior to the Closing, the Seller, in its sole and absolute discretion, may either agree to extend such dates, which extension shall be in writing, or may terminate this Agreement by written notice to the Developer, in which event the Seller shall be entitled to retain the Deposits (including all interest accrued thereon, if any) and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. The Seller's remedies for the Developer's failure to meet the schedule of events to be performed after the Closing are set forth in Section 8.02 hereof.

Section 2.04 Due Diligence Period.

(a) Developer's Inspection Rights. Subject to the provisions of this Agreement, for a period of sixty (60) days after the date of this Agreement (the "**Due Diligence Period**"), the Developer, and the Developer's employees, contractors, consultants, agents and representatives (collectively "**Developer's Representatives**"), may enter the Property, at the Developer's sole risk and the Developer's sole cost and expense, to inspect the Property and to conduct such due diligence with regard to the condition of the Property (including conducting a non-invasive Phase I environmental assessment of the Property, if desired by the Developer), as the Developer deems necessary or desirable to investigate and evaluate the Property (collectively, "**Developer's Investigations**"). Notwithstanding anything to the contrary contained above, with respect to the performance of any excavation or any environmental tests or studies of the Property involving sampling, testing or analyzing samples of water, soil, or building materials, the Developer shall first obtain the prior written approval of the Seller as to the identity of the company or persons who shall perform such excavation, tests or studies and a written proposal outlining the proposed scope of such excavation, tests and studies, which approval may be withheld by the Seller in its sole and absolute discretion. The Developer shall not perform any excavation, environmental tests or studies of the Property other than as so approved by the Seller.

All Developer's Investigations which are permitted under this Agreement shall be done at reasonable times, and after twenty-four hours' prior notice (which may be verbal) to

_____ ("Seller's Representative"), telephone no. _____; e-mail:

_____. The Developer and the Developer's Representatives shall take all reasonable precautions to minimize the impact of all Developer's Investigations on the Property. All Developer's Investigations shall be conducted in accordance with all applicable laws, codes, ordinances, orders, rules, regulations, by-laws, and ordinances (collectively, "**Laws**"). If the Developer or any of the Developer's Representatives desires to take any sample from the Property in connection with any of Developer's Investigations, the Developer must give the Seller three (3) Business Days' notice prior to performing such sampling so that the Seller may have the opportunity to be present and to split or take its own test samples. If any damage to the Property is caused by the activities or operations of the Developer or Developer's Representatives during the Due Diligence Period, the Developer shall, at its sole cost and expense, prior to the expiration of the Due Diligence Period and without regard to whether or not the Developer terminates this Agreement during the Due Diligence Period in accordance with the provisions of Section 2.04(d) hereof, repair all damage to the Property caused by any of Developer's Investigations and restore the Property (including, without limitation, all exterior building surfaces, paving and landscaping) to its former condition to the extent reasonably practical. Notwithstanding anything to the contrary herein, in the event that the Developer is otherwise entitled to the refund of any of the Deposits pursuant to the provisions of Section 2.04(d) hereof, no Deposit shall be released to the Developer until the Property has been repaired and restored to the required condition and the Seller has verified the condition of the Property as so repaired and restored.

The Developer shall deliver to the Seller, promptly after the receipt thereof, copies of all studies, analyses, reports and assessments (both final and interim versions) relating to any of Developer's Investigations involving environmental testing or studies. The Developer shall not submit a copy of any such data or report to any governmental authority unless specifically required to do so by applicable Law; and, if so required, the Developer agrees that the Seller, not the Developer or any Developer's Representative, shall make such disclosure as the Seller deems appropriate.

The provisions of this Section 2.04(a) shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

(b) Developer's Risk and Indemnification. The Developer assumes all risks associated with the performance of Developer's Investigations, including, without limitation, all damage to property (including, without limitation, the Property) and all injuries and loss to the Developer and the Developer's Representatives, and agrees to defend, indemnify and hold harmless the Seller and its employees, agents, consultants, contractors and subcontractors of, from and against any and all costs, losses, claims, defenses, demands, damages, liabilities, expenses and other obligations (including, without limitation, reasonable attorneys' fees and court costs) arising from, out of or in connection with or otherwise relating to, the entry onto the Property by, or the performance of Developer's Investigations by, the Developer or any of the Developer's Representatives. The provisions of this Section 2.04(b) shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

(c) Insurance. The Developer shall carry (i) commercial general liability coverage with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, covering liabilities arising out of the Developer's activities on the Property prior to the "Closing" (as hereinafter defined), (ii) worker's compensation insurance with coverage at least equal to statutory limits, (iii) employer's liability insurance with a limit not less than \$1,000,000 each accident, and (iv) automobile liability insurance covering owned, non-owned, leased and hired vehicles, in a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage. The Developer's insurance policies shall (i) name the Seller as an additional insured with respect to the Property, and (ii) be primary as to all other policies. It is further agreed that the Developer and its insurer(s) providing coverage must waive all rights of subrogation and/or contribution against the Seller. Prior to entry upon or commencement of any activities on the Property, the Developer shall deliver a true and correct copy of a certificate of insurance to the Seller in a form and substance satisfactory to the Seller evidencing the required coverages and providing that should any of the policies above be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The Developer shall ensure that the Developer's Representatives are adequately insured without necessity of duplicating the Developer's required insurance.

(d) Developer's Right to Terminate. The Developer may terminate this Agreement at its sole option and discretion by giving written notice to the Seller by 5:00 p.m. on the last day of the Due Diligence Period if for any reason the Property is not acceptable to the Developer. Following such notice by the Developer and the delivery by the Developer to the Seller (at no cost to Seller) of copies of the final version (unless a final version has not been prepared by or submitted to the Developer, in which case the last draft version thereof shall be delivered) of all studies, analyses, and reports relating to any of the Developer's Investigations, and absent default by the Developer hereunder, the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit. Upon such termination, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. If the Developer fails to give such written notice of termination to the Seller on or before 5:00 p.m. on the last day of the Due Diligence Period, the Developer will be conclusively presumed to have waived such right of termination and thereupon the Deposits will be nonrefundable except as otherwise provided in this Agreement.

Section 2.05 Title Examination; Title Objections.

(a) During the Due Diligence Period, the Developer may, at its sole cost and expense, (i) have the title to the Property examined, and (ii) have a survey made of the Property, subject to the provisions of Section 2.04(a), (b) and (c) hereof. The Developer shall give written notice to Seller (a "**Title Defect Notice**") not later than 5:00 p.m. on the last day of the Due Diligence Period if such title examination or survey discloses any title defect or encroachment upon the Property which is reasonably anticipated to have a material adverse effect on the Developer's intended development of the Property for the Project as set forth in its Proposal, and over which the Developer cannot obtain title insurance on an owner's title insurance policy issued by a nationally-recognized title insurance company without the payment of additional premium therefor (collectively called the "**Unpermitted Exceptions**"), which notice shall contain a description of each Unpermitted Exception together with copies of all documents evidencing

such Unpermitted Exceptions. Any matter of record title as of the effective date of such title examination, or matter in existence which appeared on or could have appeared on such a survey, which is not the subject of a Title Defect Notice shall be conclusively deemed waived by the Developer and shall constitute a Permitted Exception.

(b) If the Developer gives a Title Defect Notice to the Seller in accordance with the provisions of the preceding Section 2.05(a), then the Seller shall have the option, in its sole discretion, either:

- (i) to take no action in connection with the existence of such Unpermitted Exception, in which event all of the Unpermitted Exceptions will be deemed waived by the Developer unless the Developer terminates this Agreement as provided below in this Section 2.05(b), or
- (ii) to use reasonable efforts to remove or cure the same, provided that (1) the Seller shall not be required to incur more than \$3,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate to cure all Unpermitted Exceptions, (2) the Seller shall not be required to commence any effort to remove or cure the same if the Seller reasonably determines that the cost of such removal or cure is likely to cost more than \$3,000.00 in costs and expenses (including, without limitation, attorneys' fees and expenses) in the aggregate, and (3) the Seller shall not be obligated to commence any litigation or other proceeding in any court to effectuate such cure. If the Seller elects to proceed pursuant to this clause (ii), then the Seller may extend the Closing Date by written notice to the Developer for up to sixty (60) days to enable it to make such reasonable efforts to remove or cure the Unpermitted Exceptions.

Seller shall give written notice to the Developer not later than ten (10) Business Days after the Seller's receipt of the Title Defect Notice as to which of the foregoing options under this subsection (b) the Seller elects. Unless the Seller states in such notice that it has elected to proceed pursuant to the preceding clause (b)(ii) to attempt to remove or cure the Unpermitted Exceptions, the Developer shall have the right to terminate this Agreement by giving written notice of termination to the Seller within three (3) Business Days after the earlier of either its receipt of such notice from the Seller or the expiration of such 10-Business Day period without the Seller having given such a notice, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(c) If the Seller elects pursuant to clause (ii) of the preceding Section 2.05(b) to make reasonable efforts to remove or cure the Unpermitted Exceptions but the Seller is unable to complete such removal or cure by such extended Closing Date, the Seller shall so notify the Developer and the Developer shall, as its sole and exclusive remedy, on or before the tenth (10th) Business Day after the Developer's receipt of the Seller's notice, give notice to the Seller, that the Developer either:

- (i) elects to proceed with the Closing, in which event all Unpermitted Exceptions identified in the Title Defect Notice which the Seller has not cured or removed shall be conclusively presumed thereafter to constitute Permitted Exceptions and the Closing shall occur without any credit against or abatement of the Purchase Price on account thereof; or
- (ii) elects to terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Unless the Developer gives notice to Seller within such 10-Business Day period that the Developer has elected to terminate this Agreement pursuant to the foregoing clause (ii), the Developer shall be conclusively presumed to have elected to proceed to the Closing pursuant to the foregoing clause (i) and the uncured Unpermitted Exceptions shall be deemed waived by the Developer and shall thereupon be deemed to be Permitted Exceptions.

(d) If, between the expiration of the Due Diligence Period and the “Closing Date” (as hereinafter defined), an updated title report shows any new Unpermitted Exceptions which did not appear on the record title to the Property as of the date of the initial title examination performed during the Due Diligence Period, or an updated survey shows any new encroachments or other survey matters not in existence as of the date of the survey prepared for the Developer during the Due Diligence Period, in either case which is reasonably anticipated to have a material adverse effect on the Developer’s intended development of the Property for the Project as set forth in its Proposal, then the Developer shall have the right to give the Seller written notice of any such new Unpermitted Exception and in such instance the parties shall have the same rights and obligations as to such new Unpermitted Exceptions as stated in Sections 2.05 (a) – (c) above except that the Seller shall have a period of one (1) week to respond to the Developer’s notice under Section 2.05(a). If the Developer does not give notice of any such new Unpermitted Exceptions to the Seller on or before the Closing Date, the Developer shall be conclusively presumed to have waived such Unpermitted Exceptions and to have agreed to accept title subject to such new Unpermitted Exceptions (which shall thereupon be deemed to be Permitted Exceptions), and the Closing shall occur without any credit or abatement of the Purchase Price.

(e) The Closing Date shall be extended for such period of time as necessary to give the Seller and the Developer the benefit of the time periods stated in this Section.

Section 2.06 “As Is” Sale; No Representations or Warranties by Seller.

(a) The Developer acknowledges and agrees that the Seller shall sell and convey to the Developer, and the Developer shall accept, the Property “as is, where is, with all faults”. The Developer has not relied on, and will not rely on, and the Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, or representations, whether oral or written, from the Seller or its employees, agents, consultants, or attorneys, pertaining to the Property or relating thereto except as expressly set forth in this Agreement.

(b) The Developer acknowledges and agrees that the Seller, its employees, agents, consultants and attorneys have not made, do not hereby make and will not hereafter be deemed to have made, and Seller hereby specifically disclaims, any representations or warranties or guarantees of any kind whatsoever, whether express or implied, oral or written, with respect to the Property or the physical condition or profitability thereof, including without limitation: (i) the nature, quality, adequacy or condition of the Property, including, without limitation, the water, soil, geology, groundwater and environmental condition of the Property and the condition of any buildings or other improvements situated on the Land, (ii) the expenses and potential income associated with the ownership, operation, maintenance, or development of the Property, (iii) the suitability of the Property for any and all development, construction, activities and uses which the Developer may conduct thereon, (iv) the compliance of or by the Property or its operation (whether existing or contemplated) with any applicable Laws, (v) the habitability, merchantability, fitness, value or adequacy of the Property for any particular purpose, (vi) the Seller's title to the Property and the existence of any liens, encumbrances, charges, assessments, restrictions or claims relating thereto, (vii) the availability, condition or adequacy of any utilities serving or which could serve the Property, or the amount of any costs or fees required to extend, tie into, or tap into any utilities serving the Property or to otherwise develop the Property, or (viii) any other matter with respect to the Property.

(c) The Developer acknowledges that it is a sophisticated real estate developer who has had (or who will have pursuant to the provisions of this Agreement) access to and sufficient time to review all information, documents, agreements, studies and tests relating to the Property which it deems necessary or desirable, and that it has conducted or will conduct to its satisfaction a complete and thorough inspection, testing, analysis and evaluation of the Property, including but not limited to environmental conditions. The Developer is relying and will rely solely on its own investigation of the Property and not on any information provided or to be provided by the Seller or any agent or employee of the Seller in making its decision to purchase the Property. The Developer further acknowledges and agrees that any and all information provided or to be provided by or on behalf of the Seller with respect to the Property, including without limitation any reports, plans, specifications, studies, analyses, documents or other materials, was obtained from a variety of sources, is being provided to the Developer as a convenience only, and that the Seller has not made any independent investigation or verification of such information and makes no representations or warranties as to the accuracy or completeness of such information.

(d) Upon the Closing, the Developer shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions or violations of any Laws, may not have been revealed by Developer's investigations, and the Developer, as of the Closing, shall be deemed to have permanently and irrevocably waived, relinquished and released the Seller (and the Seller's employees, agents, consultants and attorneys) of and from any and all claims, demands, causes of action (including causes of action in tort), obligations, losses, damages, liabilities, penalties, fines, judgments, costs and expenses (including reasonable attorneys' fees and expenses) of any and every kind of character, known or unknown, now existing or hereafter created, foreseen or unforeseen, which the Developer might have asserted or alleged against the Seller (and/or the Seller's employees, agents, consultants and attorneys) at any time relating to or arising out of the Property, including, without limitation, any physical or environmental conditions. The Developer covenants and agrees never (directly or indirectly) to commence, aid in any way, or prosecute against the Seller or any of the Seller's employees,

agents, consultants and attorneys, any action or other proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities released in this Section. In addition to, and not in limitation of, the provisions of Section 10.05 hereof, from and after the Closing, the Developer shall indemnify, defend and save harmless the Town and the Town's officers, employees, agents, consultants, contractors and attorneys, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) arising in whole or in part out of or in connection with any physical or environmental conditions now existing or hereafter arising at the Land *[and the Private Property – if applicable]*, regardless of the cause thereof. The duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this subsection.

(e) The provisions of this Section 2.06 shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

Section 2.07 Approvals.

(a) The Developer shall be solely responsible for applying for and obtaining any and all governmental permits, approvals, consents, orders and determinations required for the construction, use, occupancy or operation of the Project as depicted in its Proposal and the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP), including, without limitation, a special permit pursuant to Section 8.7 of the Andover Zoning By-law (collectively, the “**Approvals**”). *[if applicable – If the Project as described in the Proposal and the CPP (as the same may have been modified as provided above) includes Private Property to be acquired by the Developer, such Private Property shall be included in all such applications for Approvals.]* The Developer shall deliver to the Seller prior to the execution of this Agreement a list of all Approvals required by applicable Law for the construction, use, occupancy or operation of the Project, together with a schedule of projected submission and issuance dates for each Approval so listed, and shall provide updates of such schedule to the Seller not less frequently than monthly. All Approvals required for the construction of the Project shall be obtained prior to the Closing. After the expiration of the Due Diligence Period, the Seller shall reasonably cooperate with the Developer in connection with the Developer's applications for Approvals, including executing any documents necessary therefor, but in no event shall the Seller incur any obligation or liability in connection therewith. The Developer shall provide to the Town copies of all applications for Approvals filed with any governmental authority other than a board, commission, department or agency of the Town, promptly after the filing thereof. The Developer shall be solely responsible, at its sole cost and expense, for all costs and expenses (including, without limitation, attorneys', engineers' and consultants' fees and expenses) associated with (i) the preparation of all applications for Approvals and all accompanying materials, (ii) applying for and obtaining Approvals, and (iii) performance of all conditions, mitigation or obligations imposed as conditions to any of the Approvals. The Developer shall reimburse the Seller, promptly upon request therefor, for all costs and expenses incurred by the Seller to its consultants (other than Town Counsel) in connection with the review of any

application for an Approval or otherwise reasonably incurred by the Seller in connection with the obtaining of an Approval by the Developer.

(b) The Developer shall use diligent and good faith efforts to obtain all Approvals required for the construction of the Project by the “Target Approvals Issuance Date” set forth in Section 2.03 hereof. In no event will the Developer be deemed to have used diligent efforts to obtain the Approvals unless the Developer submits completed applications for the Approvals in accordance with the dates set forth therefor in Section 2.03 hereof. If the Developer determines that, despite using such diligent and good faith efforts, the Developer will not be able to meet any of the deadlines with respect to obtaining Approvals as set forth in Section 2.03, it shall notify the Seller in writing prior to the relevant deadline. So long as the Developer has been using such diligent and good faith efforts, the Seller shall extend the applicable deadline by five (5) Business Days (or such longer period as the Seller may elect in its sole and absolute discretion) for the Developer to satisfy the condition required by such applicable deadline. In the event that the Developer fails to submit to the appropriate governmental authority a completed application or submission, including all required (as of the application date) studies, plans and other materials, within five (5) Business Days after the date set forth in Section 2.03 for such submission (as such date may be adjusted in accordance with the provisions of this subsection (b)), it shall immediately constitute a “Developer Default” (as hereinafter defined) under this Agreement, without the requirement of any notice or any passage of time, for which Seller shall have the right to terminate this Agreement by giving written notice to the Developer, in which event the Seller shall be entitled to retain the Deposits (including all interest accrued thereon, if any) and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(c) The Developer shall give the Seller reasonable advance notice of all public hearings and all meetings with any representatives of governmental authorities other than the Town in connection with any application for an Approval, so that representatives of the Town may attend the same if they so desire.

(d) So long as the Developer has been using such diligent and good faith efforts to obtain the Approvals, if, during obtaining any Approvals, a governmental authority imposes any final condition on any Approvals that the Developer reasonably determines would have a material adverse effect on the feasibility of the Project, then the Developer may, by written notice given to the Seller, terminate this Agreement, in which event the Developer shall be entitled to the return of the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

(e) The Developer and the Seller hereby agree that the Seller shall have no obligation in connection with (i) the application for, or obtaining of, any of the Approvals, except as expressly provided in Section 2.07(a) hereof, (ii) the performance or satisfaction of any condition, mitigation, or obligation imposed by or in connection with the issuance of any of the Approvals, or (iii) the design or construction of any building, parking area, road, driveway or other improvement constituting part of the Project or serving the Project or otherwise described in any of the materials submitted in connection with an application for any of the Approvals,

and all of the matters described in the preceding clauses (i) – (iii) shall be the sole responsibility of the Developer.

(f) The Developer shall not, without the prior written consent of the Seller, (i) enter into any covenant or agreement with any governmental authority relating to the Property that will be binding upon the Property in the event that the Closing does not occur, (ii) record any Approval (or any plan relating thereto) or notice thereof, (iii) agree to: (x) any restriction or obligation proposed to be imposed upon the Property, or (y) any exaction, mitigation measure, off-site improvement obligation, linkage payment, or other condition to the issuance of any Approval which would require either (A) the conveyance of title to or any interest in any portion of the Land, or (B) an out-of-pocket expenditure by the Project proponent or the owner of the Land (the matters described in the foregoing clauses (i) – (iii) are hereinafter referred to, collectively, as “**Approval Conditions**”) without the prior written approval of the Seller in each instance, which approval shall not be unreasonably withheld or delayed by the Seller; *provided, however*, that the Seller’s approval shall not be required with respect to any Approval Condition that is part of an Approval as to which either the Approval unequivocally provides on its face (if the permit-granting authority is willing to issue the Approval in such form), or applicable Law provides, that the Approval shall not become effective or otherwise binding upon the owner of the Property or any portion thereof unless and until title to the entire Property is conveyed by recorded deed by the Seller to the Developer.

(g) Promptly after receipt of any of the Approvals issued by a governmental authority other than an agency, board, commission or department of the Town prior to the Closing, the Developer shall furnish to the Seller a complete copy of the same.

(h) The Developer shall deliver to the Seller, promptly after receipt by the Developer, copies of all notice of appeals or other written materials relating to any threatened appeals or to any appeals that are commenced by third parties with respect to the issuance of any of the Approvals. The Developer shall diligently defend such appeals at its sole cost and expense, using qualified counsel. The Developer shall keep the Seller reasonably informed of the status of each appeal of any of the Approvals, including providing copies of all pleadings filed by any party relating to each such appeal. If, despite the Developer’s diligent defense of an appeal, the appellant obtains a final and nonappealable judgment in its favor in an appeal from the issuance of an Approval, the Developer shall promptly notify the Seller thereof and the Developer shall have the right to terminate this Agreement by written notice given to the Seller within forty-five (45) days after the entry of such final and nonappealable judgment, in which case, absent default by the Developer hereunder, the Seller will return to the Developer the Selection Deposit and the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit. In the event that this Agreement is terminated pursuant to this subsection (h), then, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder. The Developer shall not settle or compromise any appeal relating to an Approval without the prior written approval of the Town, which approval may be withheld in its sole and absolute discretion.

(i) In addition, if the court hearing an appeal relating to an Approval imposes a condition to the issuance of such Approval in a final nonappealable judgment, which condition either (A) the Developer reasonably determines would have a material adverse effect on the feasibility of the Project, or (B) is unacceptable to the Town, in its sole and absolute discretion, then the Developer or the Town (as the case may be) may, by written notice given to the other

party, terminate this Agreement, in which event the Developer shall be entitled to the return of the Execution Deposit (without interest), but the Seller shall retain the Bid Deposit and the Selection Deposit. In the event that this Agreement is terminated pursuant to this subsection (i), then, except as expressly provided otherwise in this Agreement, this Agreement shall be of no further force and effect and the parties shall have no further rights, obligations or liabilities hereunder.

Section 2.08 Conditions Precedent to the Seller's Obligation to Close.

Notwithstanding anything contained herein to the contrary, the Seller shall have no obligation to deliver the Deed and to execute and deliver the other documents required for the Closing as set forth herein, unless each of the following conditions has been satisfied (or the Seller, acting in its sole and absolute discretion, has waived such condition in writing) on or before the Closing Date:

- a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms;
- b. No Default. The Developer is not then in default in the payment or performance of any of its obligations hereunder;
- c. Performance by the Developer. The Developer shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date;
- d. No Change in Identity or Key Personnel. No Change in Identity of the Developer or change in Key Personnel shall have occurred other than such as has been approved in writing by the Town pursuant to Section 5.02.1 or Section 5.02.3 hereof;
- e. Financing. The Developer shall have (i) received and accepted in writing a commitment for financing for the construction of the Project in accordance with the terms of the Approvals (and delivered to the Seller a copy thereof), (ii) provided to the Seller evidence reasonably acceptable to the Seller that all equity funding required for the closing of the transaction as described in such financing commitment will be available to the Developer in accordance with the terms of the commitment, and (iii) not later than the Closing Date, closed such construction financing and equity funding in accordance with the terms thereof previously provided to the Seller;
- f. Approvals. The Developer shall have obtained all Approvals necessary for the construction of the Project (but with respect to a building permit, the Developer shall be required to have obtained a building permit for at least the first new building to be constructed as part of the Project, but not necessarily for all of the buildings included in the Project (as used in this Agreement, the term "**Approved Construction Documents**" shall mean any and all plans and specifications which have been submitted to, and

approved by, the Andover Building Inspector with respect to the application for a building permit for all or any portion of the Project), and all appeal periods with respect thereto have expired with no appeal having been timely filed (or, if any such appeal has been timely filed, such appeal has been finally resolved by settlement or final non-appealable judgment);

- g. Construction Management Plan. The Town Manager shall have approved the Developer's construction management plan for the Project, which shall address matters such as the delivery of materials, the location of staging and laydown areas, the proposed flow of vehicular traffic to and from the Property *[and the Private Property – if applicable]* during construction, and measures to be taken to mitigate the effects of construction on land, buildings, businesses and roadways in the vicinity of the Property;
- h. Insurance. The Developer has provided to the Seller certificates of insurance with respect to all insurance coverage required by the terms of this Agreement to be in existence during the construction of the Project, such policies to comply with the requirements of this Agreement;
- i. Disclosure of Beneficial Interest. The grantee named in the Deed shall have filed with the Commissioner of Capital Asset Management and Maintenance, and furnished the Seller with a copy of, a signed statement in the form attached hereto as Exhibit E;
- j. No Insolvency Event. The Developer shall not be the subject of an "Insolvency Event" (as hereinafter defined);
- k. Representations and Warranties of the Developer. All of the representations and warranties of the Developer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date;
- l. *If applicable – Acquisition of Private Property. The Developer shall have satisfied all conditions to closing set forth in any agreement to which the Developer is a party relating to its acquisition of title to all or any portion of the Private Property, and the deed(s) thereof to the Developer, together with any plans required to be recorded in connection with such deed, are available for recording simultaneously with the Deed pursuant to escrow arrangements satisfactory to the Seller;]*
- m. Other Documents. All other documents, agreements, affidavits and certifications reasonably required to be executed or delivered by the Seller or the Developer in connection with the transaction contemplated by this Agreement (including, without limitation, the "Restriction Documents" and the "Notice of Option" (as such terms are hereinafter defined)) shall have been fully executed in form and content reasonably satisfactory to the Seller and delivered; and

- n. Lapse of Time. The Outside Closing Date, as the same may be extended pursuant to this Agreement, shall not have occurred.

The Developer shall submit to the Seller no later than twenty-one (21) days prior to the “Closing Date” (as hereinafter defined) all materials reasonably required by the Seller to satisfy such conditions. If all of the conditions set forth in the preceding clauses b. through m. have not been satisfied by the Closing Date, then the Seller shall have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination, and the Deposits shall be retained by the Seller as liquidated damages as the Seller’s sole and exclusive remedy hereunder, or at law or in equity for such failure of condition. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

Section 2.09 Conditions Precedent to the Developer’s Obligation to Close.

Notwithstanding anything contained herein to the contrary, the Developer shall have no obligation to pay the Purchase Price and to execute and deliver the other documents required for the Closing as set forth herein, unless each of the following conditions has been satisfied (or the Developer, acting in its sole and absolute discretion, has waived such condition in writing):

- a. Status of Agreement. This Agreement shall not have been terminated by the Seller or the Developer in accordance with its terms.
- b. No Default. Seller is not then in default in the payment or performance of any of its obligations hereunder;
- c. Performance by the Seller. The Seller shall have performed, observed and complied in all material respects with all of the covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part on or before the Closing Date; and
- d. Representations and Warranties of the Seller. All of the representations and warranties of the Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though republished and remade on and as of the Closing Date.

If all of such conditions set forth in the preceding clauses b. through d. have not been satisfied by the Closing Date, then the Developer shall have the right to terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits (without interest) shall be returned to the Developer, which shall be the Developer’s sole and exclusive remedy hereunder, or at law or in equity for such failure of condition. In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities hereunder.

Section 2.10 Closing; Closing Date; Closing Procedure.

(a) **Closing.** The closing of the transaction contemplated by this Agreement (the “**Closing**”) shall occur at 10:00 a.m. on the date (the “**Closing Date**”) which is thirty (30) days after the Approvals Issuance Date, but in no event later than _____ (the “**Outside Closing Date**”), provided that if the Closing Date falls on a day that is not a Business Day then the Closing shall occur on the next Business Day. The Closing will take place pursuant to an escrow-style closing with _____ [insert name of Town’s title insurer] serving as the escrow agent for purposes of the Closing (the “**Closing Escrow Agent**”). Upon satisfaction or completion of all closing conditions and deliveries, the Closing Escrow Agent shall immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by the Seller and the Developer.

(b) **Seller’s Deliveries in Escrow.** On or before three (3) Business Days immediately prior to the Closing Date, the Seller shall deliver or cause to be delivered in escrow to the Closing Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by the Seller:

- a. the Deed conveying to the Developer title to the Property, subject to the conditions and restrictions referred to in this Agreement;
- b. the “Restriction Documents” (as hereinafter defined);
- c. *[if applicable – a “Notice of Option” in form mutually acceptable to the Seller and the Developer and suitable for recording with the Northern Essex Registry of Deeds, identifying the “Option” (as hereinafter defined) and the parcels of Private Property which are subject to the Option (the “Notice of Option”)]*;
- d. a fully-executed and acknowledged original of this Agreement, to be recorded prior to the Deed;
- e. a counterpart of the closing and settlement statement;
- f. an affidavit relating to mechanics’ liens and parties in possession in the form customarily provided by sellers of commercial properties in the Boston metropolitan area;
- g. a certification by the Seller that all representations and warranties made by the Seller in Section 9.02 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate; and
- h. any additional documents which are customarily required in commercial transactions similar to this that the Developer or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

(c) Developer's Deliveries in Escrow. On or before the last Business Day immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent the Purchase Price, less the Deposits, plus or minus applicable prorations and adjustments which are customary for transfers of real estate in Massachusetts, including the Pro Forma Tax as required by M.G.L. c.59, sec. 2C. On or before three (3) Business Days immediately prior to the Closing Date, the Developer shall deliver in escrow to the Closing Escrow Agent the following documents and instruments, duly executed and acknowledged (if applicable) by the Developer:

- a. such tax forms or returns, if any, as are required to be delivered or signed by the Developer by applicable Laws in connection with the conveyance of the Property by the Seller to the Developer;
- b. originals of all Approvals (or notice of issuance of an Approval) required to be recorded as a condition to their effectiveness (including, without limitation, the decision by the Andover Planning Board issuing a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law);
- c. the "Restriction Documents" (as hereinafter defined);
- d. *[if applicable, the Notice of Option];*
- e. a counterpart of the closing and settlement statement;
- f. a certification by the Developer that all representations and warranties made by the Developer in Section 9.01 of this Agreement are true and correct in all material respects on the Closing Date, except as may be set forth in such certificate;
- g. the certificate required by M.G.L. c. 7C, sec. 38 in the form attached hereto as Exhibit E;
- h. the Tax Compliance Certificate required by M.G.L. c. 62C, sec. 49A in the form attached hereto as Exhibit F;
- i. the Non-Collusion Certificate in the form attached hereto as Exhibit G;
- j. any plans as may be required in connection with the recordation of the Deed, which shall be the Developer's obligation and expense to prepare and record;
- k. *[if applicable – unless otherwise then held in escrow pursuant to escrow arrangements satisfactory to the Seller, the deed(s) conveying title of all of the Private Property to the Developer, together with any plans required to be recorded in connection with such deed(s); and]*

1. any additional documents which are customarily required in commercial transactions similar to this that the Seller or the Closing Escrow Agent may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

Section 2.11 Adjustments.

Water and sewer charges (if any) shall be apportioned and adjusted, as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Developer at the time of delivery of the Deed. The Seller is exempt from payment of Massachusetts Deed Excise stamps on the Deed under M.G.L. c. 64D, §1.

The Developer shall pay at the Closing a Pro Forma Real Estate Tax in accordance with the provisions of M.G.L. Chapter 59, Section 2C.

Section 2.12 Possession and Condition of Property.

Full possession of the Property, free of all tenants and occupants, is to be delivered at the time of delivery of the Deed, the Property to be then in the same condition as it now is, reasonable use and wear thereof excepted.

Section 2.13 Acceptance of Deed.

Except as otherwise expressly provided herein, the acceptance of the Deed by the Developer and the recording thereof by the Closing Escrow Agent shall be deemed to be a full performance and discharge of every agreement and obligation of the Seller contained in this Article 2 of this Agreement, except such agreements or obligations which, by the terms hereof, are to be performed after the delivery of the Deed. This Section shall survive the Closing and the delivery of the Deed.

Section 2.14 Default; Damages.

(a) Developer Default. If the Developer shall fail to perform any of its covenants and agreements contained in Article 2 of this Agreement when required to be performed hereunder prior to the recording of the Deed, and such failure shall continue for three (3) Business Days after the Seller gives the Developer written notice of such failure, then the Seller shall have the right to terminate this Agreement effective immediately upon giving written notice to the Developer of such termination, and the Deposits (together with all interest accrued thereon) shall be retained by the Seller as liquidated damages. Notwithstanding the preceding sentence, (i) in no event shall such cure period extend beyond the Closing, and (ii) if such failure relates to any covenant or agreement to be performed at the Closing, there shall be no notice required or grace or cure period allowed. The remedy set forth in the preceding provisions of this Section 2.14(a) shall be the Seller's sole and exclusive remedy hereunder, or at law or in equity, for the Developer's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Seller terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Developer nor the Seller shall have any further rights, obligations or liabilities

hereunder. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Seller be entitled to recover any damages, direct, punitive, consequential or otherwise, for the Developer's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

(b) Seller Default. If the Seller shall fail to perform any of its covenants and agreements contained in Article 2 of this Agreement when required to be performed hereunder prior to the recording of the Deed, and such failure shall continue for three (3) Business Days after the Developer gives the Seller written notice of such failure, then the Developer shall have the right to terminate this Agreement effective immediately upon giving written notice to the Seller of such termination, and the Deposits shall be returned to the Developer (without interest). Notwithstanding the preceding sentence, (i) in no event shall such cure period extend beyond the Closing, and (ii) if such failure relates to any covenant or agreement to be performed at the Closing, there shall be no notice required or grace or cure period allowed. The remedy set forth in the preceding provisions of this Section 2.14(b) shall be the Developer's sole and exclusive remedy hereunder, or at law or in equity, for a Seller's default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement. In the event that the Developer terminates this Agreement, then except as expressly provided otherwise herein, this Agreement shall be of no further force and effect and neither the Seller nor the Developer shall have any further rights, obligations or liabilities hereunder. Notwithstanding anything to the contrary contained herein, under no circumstances shall the Developer be entitled to recover any damages, direct, punitive, consequential or otherwise, for a Seller default in the performance of any of its covenants and agreements contained in Article 2 of this Agreement.

Section 2.15 Construction of the Project; Use of the Property.

The Property will be conveyed subject to a right of reverter reserved by the Town, or shall be subject to such other provision that ensures that the construction of the Project proposed by the Developer will be completed by the Developer, that the Property will not be transferred prior to completion of construction, and that for the duration of the "Restriction Period" (as defined in Section 5.01 hereof), the use and occupancy of the Property shall be in accordance with this Agreement, the RFP, the Proposal, and the Approved Plans. Reference is hereby made to Sections 5.01, 5.02, 5.03 and 8.02 of this Agreement for more detailed provisions relating to these matters.

Section 2.16 Closing Costs.

(a) The Seller shall pay the recording fee for the recordation of all documents and instruments necessary to remove Unpermitted Exceptions from title to the Property, if any are removed by Seller pursuant to the provisions of Section 2.05 of this Agreement.

(b) The Developer shall pay for the recordation of the Deed and such of the other documents delivered to, by or on behalf of the Developer at the Closing as shall be recorded in connection with this transaction. The Developer shall also be solely responsible for all title insurance premiums and charges, title search charges, survey charges, Closing Escrow Agent fees, and all fees, charges and expenses of any kind whatsoever arising out of or relating to the performance of the Developer's Investigations.

(c) Each of the Seller and the Developer shall pay the fees and expenses of its counsel and other agents, contractors and consultants retained by it in connection with the purchase or sale of the Property.

(d) The Seller and the Developer shall each pay such other Closing costs as are customarily paid by each such party in the Boston metropolitan area.

Section 2.17 Use of Sale Proceeds to Clear Record Title.

Any unpaid water charges and sewer charges, together with the interest and penalties thereon to the Closing Date, and any other liens and encumbrances which the Seller is obligated to pay and discharge pursuant to the terms of this Agreement, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds payable to the Seller at the Closing, provided that the documents required to clear record title of any such liens or encumbrances are available for recording at the Closing or arrangements for the delivery thereof have been made to the mutual satisfaction of the parties.

ARTICLE 3

CONSTRUCTION OBLIGATIONS

Section 3.01 Construction of Project.

The Developer shall design and construct on the Land [*and the Private Property – if applicable*] the following improvements as part of the Project, in accordance with the plans that have been approved by the Select Board and which shall be subject to approval by the Planning Board in connection with its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law (the “**Approved Plans**”):

(a) *Buildings:* (the “Buildings”), to be constructed in accordance with the Approved Plans, as hereinafter defined; and

(b) *Parking:*

(c) *Other Improvements:* To the extent that the Developer proposes to construct as part of the Project streets which it anticipates later requesting the Town to accept as public ways, such streets shall be built in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the Planning Board in the course of its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law. Acceptance by the Town of such streets as public ways shall be subject to the provisions of Section 8 of the Andover Subdivision Rules and Regulations.

As used in this Agreement, the term “Project” shall include the demolition of all structures and improvements existing on the Land [*and the Private Property – if applicable*] in accordance with one or more demolition permits to be issued by the Town of Andover Building Inspector, and the removal and disposal of the debris resulting therefrom in accordance with all applicable Laws, all of which work shall be performed at the Developer’s sole cost and expense.

Section 3.02 Approved Plans.

The Developer agrees to construct the Project in accordance with the Approved Plans, and not to make any substantial change or revision to the Project as shown on the Approved Plans, including, without limitation, any changes to the Buildings, parking and landscaping, during the course of construction unless such changes are first approved by the Planning Board. Nothing herein shall be deemed to waive the Developer's obligations to apply for and comply with all Approvals governing the Property *[and the Private Property – if applicable]* or the Project; *provided, however*, that the Developer may make insignificant changes as may otherwise be consistent with applicable Planning Board or other regulatory body requirements.

Section 3.03 Construction Schedule.

(a) Subject only to delays caused solely by "Force Majeure" (as hereinafter defined), the Developer shall "Commence" (as defined herein) construction of the Project in accordance with the Approved Plans and the Approved Construction Documents by a date that is thirty (30) days after the Closing (the "**Project Commencement Date**"). Construction of the Project shall be deemed to "**Commence**" upon the date that (i) a building permit for the first new building included within the Project is issued by the Town of Andover Building Inspector and (ii) the Developer commences and diligently undertakes physical construction of the Project pursuant to that building permit, which shall be evidenced by the commencement of site preparation work in furtherance of the Project.

(b) Subject only to delays caused solely by Force Majeure, the Developer hereby covenants and agrees, after construction of the Project has Commenced, to diligently prosecute such construction in accordance with the construction schedule as most recently approved by the Town pursuant to Section 3.03(d) below so as to "Complete" (as hereinafter defined) construction of the entire Project by a date which is _____ (__) months after the Closing (the "**Project Completion Date**"). The Project shall be deemed "**Complete**" on the date that: (i) the Town of Andover Building Inspector has issued a permanent certificate of occupancy for the last building to be constructed as part of the Project as shown on the CPP (including such modifications thereto as were approved by the Select Board pursuant to the selection process set forth in the RFP); (ii) all buildings and improvements included within the Project can be used for their respective intended purposes as evidenced by a certificate of substantial completion issued by the Developer's architect, subject only to a punch list of items remaining to be completed of minor nature of construction, decoration, painting, and millwork; (iii) the Project is free of debris and construction materials, and is in usable condition; (iv) all landscaping is completed and planted, except for such work that cannot be completed due to seasonal conditions; and (v) the Developer has executed, acknowledged and delivered to the Town instruments in form and content acceptable to the Town and suitable for recording, granting to the public rights of access to and passage over such streets and ways included within the Project as were designated by the Planning Board in the special permit issued for the Project pursuant to Section 8.7 of the Andover Zoning By-law (including those, if any, which the Developer later intends to request the Town to accept as public ways).

(c) For purposes of this Agreement, "**Force Majeure**" shall mean a delay or stoppage due to strikes, civil riots, war, acts of terrorism, invasion, fire or other casualty, acts of God,

adverse weather conditions not reasonably anticipated, act or failure to act of quasi-governmental or governmental authorities, unanticipated and unforeseen governmental acts or orders affecting the development of the Project, or other causes beyond the reasonable control of the party required to make performance, but specifically excluding financial constraints of such party; provided, in all cases, that (i) such act or event is beyond the reasonable control of the party claiming Force Majeure after pursuing diligently commercially reasonable efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any act or omission of such party or could not have been prevented by commercially reasonable actions on the part of such party, and (ii) the party claiming Force Majeure shall have notified the other party within a reasonable time after discovering the occurrence of the event of Force Majeure. The time or times for performance under this Agreement shall be extended for the period of delay caused solely by such event of Force Majeure, as agreed upon by the Town and the Developer.

(d) The Developer shall submit to the Town Manager for his review and approval prior to Commencing construction of the Project a detailed construction schedule for the Project, in a format acceptable to the Town Manager. This schedule shall be updated and resubmitted each month, with actual progress shown, until the Town Manager has issued a Certificate of Completion. This monthly submission shall be accompanied by a written report by the Developer citing any adjustments to the progress forecast, analyzing the causes thereof, and where applicable, noting proposed corrective efforts. Any such corrective efforts, as well as any modifications to the construction schedule as initially reviewed and approved by the Town Manager, shall be subject to the written approval of the Town Manager.

(e) During the construction of the Project, such construction shall be subject to inspection by representatives of the Town charged with inspection, and the Developer shall permit the Town access to the Land *[and the Private Property – if applicable]* and all portions of the Project under construction from time to time for such inspections at all reasonable times.

(f) It is intended and agreed that the agreements and covenants contained in this Section 3.03 with respect to the beginning and Completion of construction of the Project shall be covenants running with the land. This subsection shall not, however, apply against a “Mortgage Holder” (as hereinafter defined) permitted by this Agreement unless such Mortgage Holder shall elect to complete as permitted in Section 4.04 hereof, in which case the extension provisions of that Section shall apply.

Section 3.04 Performance of the Work.

The Developer shall procure all necessary Approvals before undertaking any Work, and shall cause all of the Work to be performed in a good and workerlike manner, in compliance with good engineering and construction practices, and in accordance with the Approved Plans, the Approved Construction Documents, and all applicable Laws and the provisions of all Approvals. The Developer shall take all commercially and reasonably necessary measures to (i) minimize dust, noise, light trespass, and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by the Project, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to police the same. As a precondition for the issuance of any Certificate of Occupancy for a Building, the Developer shall provide a

certification to the Town by the Developer's architect, at the Developer's expense, that the Work has been performed substantially in accordance with the Approved Plans and the Approved Construction Documents.

The Developer shall be solely responsible for awarding and administering all construction contracts for the construction of the Project, and the Seller shall have no obligation to award, administer or make any payments under any such construction contract, nor any liability thereunder. The Seller shall not be responsible for making any payments to any contractors, subcontractors, agents, consultants, employees or suppliers of the Developer.

The Developer shall be solely responsible for all costs and expenses of (a) the design, permitting and construction of the Project, including the installation of all utilities and site work and any other measures necessary to construct and occupy the Project in compliance with this Agreement and all applicable Laws, (b) all products, materials, tools, equipment, and fixtures relating to the Project, and (c) all contractors, subcontractors, architects, engineers, project managers, construction managers, attorneys and consultants relating to the Project.

Section 3.05 Prompt Payment by the Developer; Liens.

The Developer shall make, or cause to be made, prompt payment of all money due and legally owing and not disputed in good faith by the Developer to all persons and entities doing any work, furnishing any materials or supplies or renting any equipment to the Developer or any of its contractors or subcontractors in connection with the development, construction, furnishing, repairs, or reconstruction of any portion of the Project. The Developer shall not permit any mechanic's liens or similar liens to remain upon the Land *[or the Private Property – if applicable]* for labor and materials furnished to the Developer in connection with work of any character performed at the direction of the Developer and shall cause any such lien to be released of record without cost to the Town, by satisfaction and discharge of such lien or by providing surety against such lien by bond, unless otherwise provided in this Agreement or agreed by the Town in writing.

Section 3.06 Performance Bond.

Prior to the commencement of any work on the Property *[or the Private Property – if applicable]*, the Developer shall provide the Town with a performance bond in a form satisfactory to the Town and in the amount reasonably determined by the Planning Board to be an amount sufficient to complete the Project, with a surety subject to approval by the Town. In the event the Project as required by this Agreement is not completed within the time set forth in Section 3.03 hereof, or if the Project is not completed substantially in accordance with the Approved Plans and the Approved Construction Documents, the Town, in co-ordination with the "First Mortgage Holder" (as hereinafter defined) may require that the surety complete the Project in accordance with the Approved Plans and the Approved Construction Documents. If the Project includes any streets or ways which are either intended by the Developer or required by the Planning Board to become public ways upon completion of their construction, the Developer shall provide an additional performance bond to the Town, in a form satisfactory to the Town and in an amount reasonably determined by the Planning Board, to secure the Developer's obligation to construct such ways in accordance with the standards set forth in Section 7 of the Andover Subdivision Rules and Regulations, as the same may be modified for the Project by the

Planning Board in the course of its issuance of a special permit for the Project pursuant to Section 8.7 of the Andover Zoning By-law, and to obtain the Town's acceptance of the same as public ways.

Section 3.07 Utility Services.

(a) It is understood and agreed that the Developer shall undertake and complete, at the Developer's sole cost and expense, the capping, filling, removal, and disposal of all existing abandoned utilities located on and/or under the Property [*and the Private Property – if applicable*], as the Developer may deem necessary. The Seller shall not be responsible for moving or filling with concrete any abandoned, underground utility lines, pipes and/or conduits.

(b) The Developer shall be solely responsible, at its sole cost and expense, for any utility relocation, upgrades and/or modifications for all utilities to the Project, including, without limitation, natural gas, electric, communications, storm water, or water as may be necessary to service the Project.

(c) The Developer shall provide "As-Built" plans for each phase of utilities work as completed. The As-Built plans shall be prepared and stamped by a Registered Land Surveyor licensed in Massachusetts and shall show the horizontal and vertical location of all improvements, all new or relocated utilities, and all existing utilities to be retained. The As-Built plans shall be provided in hard copy and digital format, in a form acceptable to the Town's Department of Public Works and compatible with the Town's existing Geographical Information System.

(d) Any work performed under subsections (a) or (b) above that is not in strict accordance with the Approved Construction Documents and/or all applicable Laws shall be immediately remedied and repaired at the sole cost of the Developer and/or its contractor, or in the alternative by the Seller, in the event the Developer fails for any reason to cure such defects after written notice thereof and a cure period of thirty (30) days, in which case the Seller shall be entitled to all costs and expenses related thereto and to exercise whatever rights it may have as a governmental entity with respect to the proper functioning and installation of utilities in the Town of Andover.

(e) The provisions of this Section 3.07 shall survive the Closing and the delivery of the Deed.

Section 3.08 Certificate of Completion.

(a) Upon written request made by the Developer following Completion of construction of the entire Project (as defined in Section 3.03 hereof), the Town shall inspect the Project and, if it determines from such inspection that Completion of construction of the entire Project has occurred, then the Town Manager shall issue the "**Certificate of Completion**" to the Developer within thirty (30) days of its receipt of such request. The Town Manager shall be under no obligation to issue a Certificate of Completion until such time as the Developer has requested in writing that the Town issue a Certificate of Completion and the Town has made such inspection of the Project for such purpose. There will be only one (1) Certificate of Completion issued with respect to the Project.

(b) If the Town shall refuse or fail to provide the Certificate of Completion in accordance with the provisions of this Section, the Town or a representative of the Town shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement indicating in reasonable detail in what respects the Developer has failed to Complete the Project in accordance with the provisions of this Agreement, the Approved Plans, and the Approved Construction Documents, and what measures or acts will be necessary, in the opinion of the Town, for the Developer to take or perform in order to obtain such certification.

(c) Notwithstanding anything to the contrary in this Agreement, the Certificate of Completion issued by the Town pursuant to Section 3.08(a) above shall be a conclusive determination of satisfaction and termination of this Agreement and the covenants in this Agreement, except those that expressly survive the issuance of the Certificate of Completion. Any such certification shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any "Funding Source", including any "Mortgage Holder" (as these terms are hereinafter defined). The issuance of the Certificate of Completion shall bar the exercise thereafter of any remedies by the Town set forth in this Agreement which are expressly limited to be exercised prior to the issuance of a Certificate of Completion.

Section 3.09 Representatives.

The Developer shall designate in writing a representative or representatives authorized to act on its behalf. Unless and until the Town has received written notice that such authority has been revoked, the Town shall be entitled to rely upon the directives of such representative(s). The Town shall act by and through its Town Manager.

ARTICLE 4

FINANCING; RIGHTS OF MORTGAGEES

Section 4.01 Financing.

Prior to Closing, the Developer shall provide evidence to the Town, through the Town Manager, that it has obtained funds sufficient to purchase the Property *[and the Private Property – if applicable]* and to construct and complete the Project from one or more lenders or other funding, equity and financing sources, (collectively, "**Funding Sources**") secured by one or more mortgages, deeds of trust or other instruments creating an encumbrance or lien upon the Land *[and the Private Property – if applicable]* and the improvements thereon to be recorded after this Agreement (the "**Mortgage(s)**"). The holder(s) of the Mortgage(s) is (are) referred to herein as the "**Mortgage Holder(s)**" and the holder of a first priority mortgage lien upon the Land *[and the Private Property – if applicable]* and the improvements thereon is referred to herein as the "**First Mortgage Holder**".

The Town shall provide to each Mortgage Holder whose name and address has theretofore been provided to the Town notice and an opportunity to cure any default on the part of the Developer, and will accept the cure thereof by a Mortgage Holder, all as provided in Section 8.03 hereof. The Town hereby consents to the Funding Sources exercising any rights

under their Mortgages and security agreements, including but not limited to rights to foreclose or take title and or control of the Land *[and the Private Property – if applicable]* and the Project, pursuant to their Mortgage(s) and any other collateral security, financing or loan documents entered into between the Developer and any of the Funding Sources, so long as the Funding Sources shall include a condition in all Mortgages and other collateral security, financing or loan documents that any party acquiring title to the Land *[and the Private Property – if applicable]* and the improvements thereon from a Funding Source, and all successors in title thereto, shall be bound by the terms and provisions of this Agreement.

Section 4.02 Refinancing/Additional Financing.

The Developer shall provide the Town with thirty (30) days' prior written notice of any intended refinancing of a Funding Source that is to occur prior to Completion of construction, including in such notice the name(s) and address(es) of such proposed new Funding Source(s) and any other information regarding the Mortgage(s) and other collateral security, financing or loan documents to be entered into by the Developer in connection with such refinancing, as the Town may reasonably require. Provided that the Developer demonstrates to the Town's satisfaction that the proposed Funding Source is not an affiliate of the Developer, no approval of such refinancing by the Town shall be required. The term "Mortgage(s)" or "Funding Sources" shall include said later approved refinancing or additional financing.

Section 4.03 Notice of Foreclosure.

The Developer shall cause the Mortgage Holders to give not less than sixty (60) days' prior written notice to the Town, by certified mail, of each Mortgage Holder's intention to accelerate the indebtedness secured by its Mortgage, or to foreclose upon its Mortgage, or to accept a conveyance of the Land *[and the Private Property – if applicable]* and the improvements thereon in lieu of foreclosure, in which event the Town shall have the right, but not the obligation to cure whatever default(s) have entitled the Mortgage Holder to take such action (subject to appropriation), which amount, together with the Town's costs and expenses (including reasonable attorneys' fees and expenses) shall be added to the amounts due to the Town pursuant to Section 8.02(e)(i) hereof.

Section 4.04 Rights and Duties of Mortgage Holder upon Acquisition Prior to Completion.

(a) Any Mortgage Holder who obtains title to the Land *[and the Private Property – if applicable]* and the improvements thereon or any portion thereof prior to Completion of construction of the Project by foreclosure or action in lieu thereof (but not including a party who obtains title through any such Mortgage Holder) shall not be obligated to construct or complete the Project, but shall have the following options:

1. complete construction of the Project in accordance with the Approved Plans, the Approved Construction Documents, the Proposal and this Agreement, and in all respects comply with the provisions of this Agreement, or
2. sell, assign, or transfer with the prior written consent of the Town (not to be unreasonably withheld, delayed or conditioned), title to the Land *[and the Private*

Property – if applicable] and the improvements thereon or any part thereof to a buyer, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the Developer under this Agreement in respect of the Project, by written instrument reasonably satisfactory to the Town and recorded forthwith in the appropriate Registry of Deeds, or

3. reconvey title to the Land *[and convey title to the Private Property – if applicable]* and the improvements thereon to the Town, in which event the provisions of Section 8.02(e) relative to resale shall apply.

(b) In the event that a Mortgage Holder elects to complete construction pursuant to subsection (a)(1) above, or sells, assigns or transfers pursuant to subsection (a)(2) above, the Town shall extend the time limits set forth in Section 3.03 hereof as shall be reasonably necessary to enable the Completion of construction of the Project, and upon Completion of such construction, the Mortgage Holder or the buyer, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 3.08 hereof.

Section 4.05 Rights and Duties of Mortgage Holder upon Acquisition after Completion.

If a Mortgage Holder acquires, through foreclosure or action in lieu of foreclosure or otherwise, title to the Land *[and the Private Property – if applicable]* and the Project or any part thereof after the Completion of construction of the Project, such Mortgage Holder, for the period during which it holds such title, shall comply with all applicable provisions of this Agreement.

Section 4.06 Default of Mortgage Holder.

Any Mortgage Holder in whom title to the Land *[and the Private Property – if applicable]* and the improvements thereon has vested by way of foreclosure or action in lieu thereof shall be subject to the Developer Default provisions set forth in Section 8.01 hereof, and the Town shall have the enforcement rights set forth in Section 8.02 hereof, as if the Mortgage Holder were the Developer, so that the Mortgage Holder shall receive notice of a Developer Default in its capacity as Developer and shall not be entitled to an additional notice or cure period in its capacity as Mortgage Holder, and shall have the benefit of all the cure periods applicable to the Developer as set forth in Section 8.01 hereof.

Section 4.07 Town's Option to Purchase Land and the Improvements Thereon Following Foreclosure.

In the event that ownership of all or portions of the Land *[and the Private Property – if applicable]* and the improvements thereon have vested in a Mortgage Holder by way of foreclosure or action in lieu thereof, the Town shall be entitled to (and every mortgage instrument made prior to Completion of construction with respect to the Land *[and the Private Property – if applicable]* and the Project by the Developer shall so provide), at the Town's option, a conveyance to the Town of the Land *[and the Private Property – if applicable]* and the improvements thereon upon payment to such Mortgage Holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate

credits, including those resulting from collection and application of rentals and other income received from the Land *[and the Private Property – if applicable]* and the improvements thereon, if any); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such Mortgage Holder in and as a direct result of the subsequent ownership or management of the Land *[and the Private Property – if applicable]* and the improvements thereon; (iv) the costs of any improvements made by such Mortgage Holder; and (v) an amount equivalent to the interest that would have accrued to the date of payment on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

Section 4.08 Obligation to Pay Taxes and Assessments.

The Developer shall pay or cause to be paid when due all taxes, assessments and other charges, fines and impositions attributable to the Land *[and the Private Property – if applicable]* and the improvements thereon, which may give rise to a lien upon the Land *[or the Private Property – if applicable]* and the improvements thereon or any part thereof, but this clause shall not be deemed to preclude the Developer from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

ARTICLE 5

RESTRICTIONS

Section 5.01 Restriction on Use.

Section 5.01.1 Restrictions on Use during Restriction Period.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof, and the Deed shall contain restrictions and covenants binding upon the Developer, its successors and assigns, that commencing on the date of this Agreement and ending on the thirtieth (30th) anniversary of the date on which the Certificate of Completion is issued for the Project in accordance with the provisions of Section 3.09 hereof (the “**Restriction Period**”), the Land *[and the Private Property – if applicable]* and the Project shall be used only for the uses specified in the Proposal and this Agreement. The foregoing covenant shall run with the land and shall be binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Town, to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the Developer, its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof. *[if applicable – The restrictions and covenants described in this Section 5.01.1 shall be included in the “Restriction Documents” (as hereinafter defined) with respect to the Private Property.]*

Section 5.01.2 Permanent Restrictions on Use.

The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof, that (i) any green space included within the Project shall be restricted in perpetuity to use only as open space for the use and enjoyment by the public, which use restriction shall, at the election of the Town, either be set forth in the Deed or in a separate instrument conveying either title to such green space or the benefit of such a restriction with respect to such green space to either the Town or a nonprofit organization designated by the Town, and (ii) all affordable housing units constructed or to be constructed as part of the Project shall be subject to a permanent restriction preserving such units as affordable housing. The documents described in the preceding sentence (collectively, the “**Restriction Documents**”) shall be in form and content mutually acceptable to the Town and the Developer, and shall be recorded simultaneously with the Deed (to the extent such restrictions are not set forth in the Deed itself).

Section 5.02 Restrictions During Construction.

From the date the parties enter into this Agreement until the Town has issued the Certificate of Completion, the following restrictions shall bind the Developer and its successors and assigns, and every successor in interest to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof:

Section 5.02.1 Prohibition Against Change in Identity and Ownership, or Key Personnel.

This Agreement is being entered into as a means of permitting and encouraging the development of the Property in accordance with the objectives of the Town for the redevelopment of the Property as put forward in the Recitals, and not for speculation in landholding. The Developer acknowledges that, in view of:

- a. The importance of the undertakings set forth herein to the general welfare of the community;
- b. The importance of the identity of the parties in control of the Developer and the Project;
- c. The importance of the Key Personnel identified by the Developer in its Proposal remaining in place with respect to the Project until the Completion of Construction; and
- d. The fact that a transfer of any or all of the legal or beneficial ownership in the Developer, or any other act or transaction involving or resulting in a change in the ownership or change in the identity of the parties in control of the Developer or the Project, is for practical purposes a transfer or disposition of the Developer’s interest in the Project;

it is hereby understood and agreed that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, and except by reason of death, disability or retirement of any individual holding a direct or indirect ownership interest in the Developer, there shall be no (i) change in the identity of the parties holding a legal or beneficial interest in the Developer, or

(ii) transfer, by assignment or otherwise, of the Developer's rights under this Agreement or of the Developer's legal or beneficial interest in the Land *[or the Private Property – if applicable]* and the Project, to any person or entity (all such changes being referred to herein as a **"Change in Identity"**), unless in each instance, (a) the Developer gives the Town prior written notice of a proposed Change in Identity, which notice shall provide sufficient information to enable the Town to evaluate the acceptability of the proposed Change in Identity and shall request the Town's consent thereto, and (b) the Town, in its sole and absolute discretion, within forty-five (45) days from the date on which the Town receives said written notice or such longer period as may be agreed upon by the Developer and the Town, approves of such change in writing. If the Town notifies the Developer in writing within said forty-five day (45) day period (or longer period agreed to by the parties) of additional information reasonably required in order to review and evaluate the proposed Change in Identity, or of an objection to the proposed Change in Identity, specifying the grounds for such objection, the Developer shall make no Change in Identity without the subsequent written approval of the Town, which approval shall be granted or withheld by the Town in its sole and absolute discretion. Any attempted Change in Identity made contrary to this Section shall be void.

In order to fulfill the purposes of this Section, the Developer agrees that during the period between execution of this Agreement and the issuance of a Certificate of Completion by the Town, the Developer shall annually, within ten (10) days of each anniversary of the date of this Agreement, provide to the Town the names of all of the direct or indirect holders of an ownership interest in the Developer, in the form of an affidavit made by an officer of the Developer.

The foregoing restrictions on the Change in Identity shall not be binding on a Mortgage Holder which has foreclosed its Mortgage or has otherwise acquired title to the Land *[and the Private Property – if applicable]* and the improvements thereon in lieu of foreclosure, but shall apply to said Mortgage Holder's successors in title.

Section 5.02.2 Prohibition Against Transfer of Land and the Project.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees for itself, and its successors and assigns, that, except for the granting of the Mortgages and the approved refinancing of the Mortgages, and entering into other customary security agreements with the Funding Sources, and except for [sales or] leases of units in the ordinary course of business and the granting of easements necessary for the construction of the Project, including utilities, the Developer shall not, prior to the issuance of a Certificate of Completion by the Town, sell, assign or otherwise transfer the Land *[or the Private Property – if applicable]* and the improvements thereon or any portion thereof without the prior written consent of the Town, acting by its Select Board, which consent may be withheld by the Town, in its sole and absolute discretion. As a condition of any approval by the Select Board of a transfer, the transferee shall assume and agree in writing to comply with all conditions, obligations and agreements contained in this Agreement, the Deed and the Restriction Documents, including but not limited to the obligation to construct the Project. The term "transfer" shall include, without limitation, any total or partial sale, or lease (not including the lease of the residential units or any of the commercial space in the ordinary course of business). It is the intent of this Section that the prohibition of transfer of the Land *[and the Private Property – if applicable]* and the

improvements thereon shall not apply to transfers resulting from the foreclosure of a Mortgage, provided that, except as otherwise provided in Section 4.04 above, the transferee assumes and agrees to comply with all conditions, obligations and agreements contained in this Agreement, the Deed and the Restriction Documents, including, but not limited to the obligation to construct the Project. No transfer shall relieve the Developer of its obligations hereunder, who shall be jointly and severally liable with the transferee. Any attempted assignment or other transfer made contrary to this Section shall be void.

Section 5.02.3 Prohibition Against Change in Key Personnel.

For all of the same reasons stated in Section 5.02.1 above, the Developer hereby agrees that, except as otherwise expressly provided herein, during the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, it shall assign to the Project the individuals identified as “Project Principal”, “Project Manager”, or otherwise identified in the “Qualifications Statement” submitted as part of the Proposal as key individuals from the Developer to be assigned substantive roles with the Project, and that such persons will devote such time to the Project as is necessary and appropriate to the full and timely performance of this Agreement by the Developer. The Developer agrees that none of such persons will be removed from his or her responsibilities on the Project without the written consent of the Town (which consent shall not be unreasonably withheld), except in the event of his or her death, disability or departure from the employment of the Developer, or upon the written request of the Town. In the event, however, that any of such persons are so removed or leave the Developer’s employ, any subsequent personnel proposed by the Developer must be approved in advance by the Town, which approval shall not be unreasonably withheld.

In addition, the Developer hereby agrees to use its best efforts to cause the architect(s), engineer(s) and other consultants identified in the Proposal as a member of the Developer’s team for the Project (i) to assign to the Project for the period commencing on the date hereof and continuing until the issuance of the Certificate of Completion by the Town, their respective principals and employees identified in the “Qualifications Statement” submitted as part of the Proposal, (ii) to enable such persons to devote such time to the Project as is necessary and appropriate to the full and timely performance of this Agreement by the Developer, (iii) not to remove any such persons from his or her responsibilities on the Project without the written consent of the Town (which consent shall not be unreasonably withheld), except in the event of his or her death, disability or departure from their current employment, or upon the written request of the Town, and (iv) in the event, however, that any of such persons are so removed or leave their current employer’s employ, to obtain the prior approval by the Town of any proposed replacement personnel, which approval shall not be unreasonably withheld.

The individuals identified by title in, or otherwise described in, this Section are referred to in this Agreement, collectively, as the Developer’s “Key Personnel”.

Section 5.03 Restrictions Continuing after Completion of Construction.

Section 5.03.1 Material Alteration.

The Developer shall not, for the duration of the Restriction Period, materially alter the Buildings, which shall include the modification, demolition, subtraction therefrom, reconstruction, and additions to the Buildings or extensions thereof, or change to the materials, design, dimensions or color thereof, if such reconstruction, demolition, subtraction, alteration, addition, extension or change will materially affect in any way the external appearance of the Buildings, or make other changes to the design of the Buildings so as to deviate substantially from the Approved Plans, unless the Developer first submits to the Planning Board a revised concept plan showing the proposed alterations at least forty-five (45) days prior to making such change and the Planning Board approves of such change. If the Planning Board does not approve the proposed material alteration to the Buildings, the Developer shall not make such proposed material alteration. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer so modify, reconstruct or remove such portion or portions of the Buildings as were altered, modified, reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Town, and the Developer shall promptly comply with such a directive at its sole cost and expense. Nothing herein contained shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior feature of the Buildings which does not involve a change in design or material of such exterior feature of the Buildings or otherwise substantially change the outward appearance of the facade of the Buildings, nor to prevent landscaping the Land *[and the Private Property – if applicable]* with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition or to comply with any Law. This restriction shall be set forth in the Deed.

Section 5.03.2 Change in Use.

The Developer shall not, for the duration of the Restriction Period, change the use of the Buildings or any material portion thereof from that set forth in the Proposal, the Approvals, and Section 7.01 of this Agreement, except in accordance with the provisions of this Section. In the event that at any time during the Restriction Period the Developer is unable to economically maintain one or more of the elements of the Project in the use required by the Proposal, the Approvals and this Agreement, for good and substantial cause(s), the Developer may request approval by the Select Board of a change in use by presenting to the Select Board evidence of such good and substantial cause(s) for the proposed change together with a concept plan showing the proposed change. No such change shall be made without the approval by the Select Board of such cause, such proposed change in use, and such concept plan. If the Select Board so approves, the Developer shall proceed to obtain approvals for such change under the applicable provisions of the Zoning By-law, if necessary. If the Select Board notifies the Developer in writing, within sixty (60) days after its receipt of such information from the Developer, of its objection to the reasons proffered for the proposed change or the concept plan or the proposed change in use, specifying the grounds for such objection, the Developer shall submit additional evidence relative to the cause and/or a revised concept plan accordingly, and the Select Board shall have an additional thirty (30) days to approve or disapprove the cause for the proposed change in use and/or the revised concept plan. In the event the Developer shall fail to comply with the foregoing requirement, the Town may within thirty (30) days of its discovery thereof, direct in writing that the Developer cease such use which has not been approved by the Select Board pursuant to this Section, and the Developer shall promptly comply with such a directive at its sole

cost and expense. Approvals hereunder shall be at the discretion of the Select Board and there shall be no deemed approvals for purposes of this Section. This restriction shall be set forth in the Deed.

Section 5.04 Transfers after Completion of Construction.

After Completion of construction of the Project, as evidenced by the issuance by the Town of a Certificate of Completion, the Developer may assign or otherwise transfer all or any portion of or interest in the Land *[and the Private Property – if applicable]* and the Project, or any interest in the Developer may be assigned or transferred, without approval of the Town, provided that the Land *[and the Private Property – if applicable]* and the Project and such transferred interests shall remain subject to the provisions of this Agreement.

Section 5.05 Survival.

The provisions of this Article 5 shall survive the Closing and the delivery of the Deed.

ARTICLE 6

MAINTENANCE; INSURANCE; RESTORATION

Section 6.01 Maintenance.

The Developer, its successors and assigns shall, for the duration of the Restriction Period, maintain the Project in first class condition, reasonable wear and tear excepted, including maintaining, repairing and replacing deteriorated components of the Buildings and other improvements constructed as part of the Project. The Developer, its successors and assigns shall, for the duration of the Restriction Period, maintain the Project in compliance with all Laws from time to time in effect.

Section 6.02 Insurance.

From the date of this Agreement until the issuance by the Town of a Certificate of Completion for the Project, the Developer agrees to maintain in full force and effect the following insurance coverages:

(a) a policy of Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of reconstruction, written on a completed value basis or a reporting basis, for property damage, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town;

(b) a policy of Commercial General Liability Insurance against claims for bodily injury, death and property damage occurring upon, in or about the Land *[and the Private Property – if applicable]* and the Project and the adjoining sidewalks, with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town;

(c) a policy of Automobile Liability Insurance covering any automobile owned, hired or non-owned and used in connection with work being performed on the Land *[and the Private Property – if applicable]*, in an amount not less than \$1,000,000 per occurrence, naming the Town as an additional insured and providing a waiver of subrogation in favor of the Town;

(d) Employer's Liability insurance in an amount not less than \$1,000,000, providing a waiver of subrogation in favor of the Town; and

(e) Worker's Compensation Insurance in the amount required by applicable law.

All insurance provided for in this Section 6.02 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility, licensed and doing business in Massachusetts and having a so-called Best's Rating of "A: VIII" or better. Upon the execution of this Agreement, and thereafter prior to the expiration dates from time to time of the policies required pursuant to this Section 6.02, certificates of such insurance with pertinent endorsements attached, bearing notations evidencing the payment of premiums or accompanied by other reasonably satisfactory evidence of such payment shall be delivered by the Developer to the Town. Each policy or certificate issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to the Town.

Section 6.03 Obligation to Restore.

Until the issuance of a Certificate of Completion, in the event that any damage or destruction of the Project or any part thereof occurs as a result of fire or other casualty, the Developer shall be responsible for the restoration of the Project to a condition at least comparable to that existing at the time of such damage or destruction, to the extent that such insurance proceeds may permit; *provided, however*, that if such damage or destruction is caused as a result of the negligence or willful act or omission of the Developer, or of any of its employees or agents, members, contractors, subcontractors, lessees, licensees or invitees, the Developer shall be responsible for the full restoration of the damaged or destroyed Project regardless of the cost thereof or the amount of the available insurance proceeds. Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all respects be in accordance with and conform to the provisions of the Approved Plans, the Approved Construction Documents, and the provisions of this Agreement.

The Developer shall commence to reconstruct or repair the Project, or any portion thereof, which have been destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any mortgagee and all permits have been received (or, if the conditions then prevailing require a longer period, such longer period as the Town may specify in writing), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof, subject to Force Majeure.

ARTICLE 7

USE OF THE PROPERTY

Section 7.01 Use of the Land and the Project.

The Land [*and the Private Property – if applicable*] and the Project shall be used for _____. Throughout the duration of the Restriction Period, the use of the Land [*and the Private Property – if applicable*] and the Project or any material portion hereof shall not be changed except in accordance with the provisions of Section 5.03.2 hereof. The Developer shall construct and use the Project in compliance with all applicable Laws and all Approvals issued by any federal, state or local governmental authority having jurisdiction thereof.

ARTICLE 8

NOTICE AND DEFAULT PROVISIONS

Section 8.01 Developer Default.

The following shall each be an event of default by the Developer (referred to herein as a “**Developer Default**”):

- a. Breach by the Developer of any of the restrictions set forth in Article 5 of this Agreement, the Deed or the Restriction Documents;
- b. Failure by the Developer to pay any amount to the Town when due and owing hereunder, which failure continues for thirty (30) days following receipt of written notice from the Town specifying such failure;
- c. Failure by the Developer to observe or perform any of the Developer’s covenants, agreements, or obligations set forth in this Agreement other than those described in the foregoing clauses a. and b. within sixty (60) days following receipt of written notice from the Town specifying such failure, or if such breach is curable through the use of diligent efforts but is not so curable within such 60-day period, then within such longer period as is approved by the Town Manager to cure the same, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion;
- d. Failure by the Developer, after the expiration of all applicable notice and cure periods provided in its financing arrangements (if any), to observe or perform any of the Developer’s covenants, agreements, or obligations pursuant to any agreement between the Developer and any of the Funding Sources;
- e. The issuance of any execution or attachment against the Developer or any of the Developer’s property pursuant to which the Land [*or the Private Property – if applicable*] and the improvements thereon shall be taken or occupied or attempted to be taken or occupied, provided that the Developer is first provided an opportunity to cure the same within ninety (90)

days after such execution or attachment is first issued, unless extended by agreement of the parties; or

f. The filing by the Developer of a voluntary petition, or the filing against the Developer of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of the Developer, or the filing by the Developer of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by the Developer for the benefit of creditors, or appointment of a trustee, receiver, or liquidator of all or any part of the assets of the Developer, and within one hundred twenty (120) days after the commencement of any such proceeding against the Developer, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of the Developer or of all or any part of the Developer's property, without the consent or acquiescence of the Developer, such appointment shall not have been vacated or otherwise discharged.

Section 8.02 Rights of the Town upon a Developer Default.

(a) In the event of a Developer Default, the Town may exercise its rights set forth in this Section 8.02, provided that:

- i. the Town has delivered written notice of the Developer Default to the Mortgage Holder(s), whose name(s) and address (es) the Developer or the Mortgage Holder(s) has previously delivered to the Town;
- ii. sixty (60) days have passed following delivery of said notice to the Mortgage Holder(s);
- iii. the Mortgage Holder(s) has failed to cause the Developer Default to be cured within said sixty (60) days, or in the event of a non-monetary default that is curable but is not reasonably susceptible to cure within said sixty (60) day period, the Mortgage Holder has not commenced and continually prosecuted cure of said default to completion (said cure period, the **"Mortgage Holder Cure Period"**); and
- iv. the Town has not received written notice from the Mortgage Holder(s) that it has commenced foreclosure proceedings against the Developer.

(b) Subject to the provisions of subsection (a) above, the Town may, at its option, cure any Developer Default, whether prior to or subsequent to the issuance by the Town of a Certificate of Completion, in which case the Town shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer, upon demand therefor, of all costs and expenses incurred by the Town in curing such Developer Default.

(c) Subject to the provisions of subsection (a) above, the Town shall, in the event of a Developer Default, whether prior to or subsequent to the issuance by the Town of a Certificate of

Completion, have the right to institute any and all actions and proceedings in law or at equity as may be appropriate against the Developer, including actions and proceedings to compel specific performance and to bring a claim in a court of competent jurisdiction seeking damages from the Developer in an amount representing the Town's costs, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from the Developer Default.

(d) In addition, subject to the provisions of subsection (a) above, if the Developer Default occurs prior to the issuance by the Town of a Certificate of Completion, the Town, after expiration of the applicable cure period (if any) provided in Section 8.01 hereof, shall also have the right:

- i. to require the Developer, by written notice, to promptly surrender possession of the Land and the improvements thereon and cause title to the Land (including all improvements therein) to be reconveyed to the Town without cost to the Town, by Quitclaim Deed, provided that (i) such reconveyance shall be subject to the lien of any existing mortgages thereon permitted under this Agreement, (ii) this right of the Town shall not apply after the issuance of a Certificate of Completion for the Project pursuant to Section 3.08 hereof, and (iii) following such reconveyance, the Developer shall have the right to receive payment, if any, as provided in subsection (e) below. If the Developer shall fail so to reconvey, the Town may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer; and
- ii. to re-enter and take possession of the Land *[and to take possession of the Private Property – if applicable]* (including all improvements thereon) and to terminate (and re-vest in the Town) the estate conveyed by the Deed to the Developer, it being the intent of this Section, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, the Town at its option may declare a termination in favor of the Town of the title, and of all the rights and interests in the Property and that such title, and all rights and interest of the Developer, and any assigns or successors in interest, in the Land and the improvements thereon, shall revert to the Town; provided, that such condition subsequent and any re-vesting of title as a result thereof in the Town: (1) shall be subject to the lien of any existing mortgages permitted under this Agreement, (2) shall not apply after the issuance of a Certificate of Completion for the Project pursuant to Section 3.08 hereof, and (3) shall require the Town to make payments, if any, as provided in subsection (e) below. If the Town exercises its right to take title to the Land and the improvements thereon, (x) the Town shall record a notice of such action with the Registry of Deeds, and (y) upon written request by the Town, the Developer shall execute, acknowledge and deliver to the Town a confirmatory deed of the Land and the improvements thereon.

[If applicable, add: If the Town elects to exercise its rights under either clause i. or clause ii. of this subsection (d) so as to reacquire title to the Property, the Town shall have the option (the

“Option”) also to acquire title to such parcels of the Private Property as the Town identifies in a written notice given to the Developer, in accordance with the provisions of Exhibit H attached hereto and made a part hereof.]

(e) Upon the conveyance by the Developer to the Town of title to, or the reversion in the Town of title to, the Land *[and the acquisition by the Town from the Developer of title to the Private Property by means of the exercise of the Option – if applicable]* and the improvements thereon or any part thereof as provided herein, the Town shall use its best efforts to resell the Land *[and the Private Property so acquired by the Town– if applicable]* and the improvements thereon or part thereof (subject to such mortgage liens as are provided for herein) as soon and in such manner as the Town shall find feasible (subject to the requirements of applicable Laws including, without limitation, M.G.L. c. 30B), to a qualified and responsible party or parties (as determined by the Town), who will assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the Town and in accordance with the uses specified for such property or part thereof in this Agreement. Upon such resale of the Land *[and the Private Property so acquired by the Town – if applicable]* and the improvements thereon, the proceeds thereof shall be applied as follows:

- i. First, to reimburse the Town for all costs and expenses incurred by the Town in connection with the recapture, management and resale of the Land *[and the Private Property (including, without limitation, all amounts paid by the Town in connection with the exercise of the Option) – if applicable]* and the improvements thereon or any part thereof (but less any income received by the Town from the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Land *[and the Private Property – if applicable]* and the improvements thereon or any part thereof or, in the event the Land *[and the Private Property – if applicable]* and the improvements thereon are exempt from taxation or assessment or water and sewer charges during the period of ownership thereof by the Town, an amount equal to such taxes, assessment, or charges (as reasonably determined by the appropriate Town officials) as would have been payable if the Land *[and the Private Property – if applicable]* and the improvements thereon were not so exempt); any payments made or necessary to be made to discharge any monetary encumbrances or liens due to obligations, defaults or acts of the Developer; any reasonable expenditures made or obligations incurred with respect to the completion of the improvements on the Land *[and the Private Property – if applicable]* or any part thereof, and any amounts otherwise owing to the Town by the Developer under this Agreement;
- ii. Second, in their respective order of priority, to pay any and all existing mortgage indebtedness permitted under this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Land *[or the Private Property – if applicable]* and the improvements thereon, in favor of mechanics, materialmen or subcontractors;

- iii. Third, if there is any balance of proceeds remaining, to use the balance of the proceeds to reimburse the Developer for and up to the amount of cash actually invested by it in the purchase and improvement of the Land *[and the Private Property – if applicable]* less any profit theretofore realized by the Developer from the disposition of any interest in the Land *[and the Private Property – if applicable]* and the improvements thereon or in any individual part or parcel thereof; and
- iv. Finally, any balance remaining after such reimbursements shall be retained by the Town as its property.

(f) Any delay by the Town in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Section 8.02 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this Section that the Town should not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the Town's waiver of any specific default be treated as a waiver of the Town's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default, except and only to the extent specifically waived in writing).

Section 8.03 Rights of Mortgage Holders upon Developer Default.

In the event of a Developer Default, any Mortgage Holder shall have the right to cure any such Developer Default within the cure period (if any) provided therefor in Section 8.01 hereof and within the Mortgage Holder Cure Period, as well as the other rights provided in this Section 8.03.

Section 8.03.1 Notice of Developer Default to Mortgage Holder.

In the event that the Town gives written notice to the Developer of default under this Agreement, the Town shall forthwith furnish a copy of the notice to each of the Mortgage Holders whose name and address has theretofore been provided to the Town by either the Developer or the Mortgage Holder. To facilitate the operation of this Section, the Developer shall at all times keep the Town provided with an up-to-date list of names and addresses of Mortgage Holders, and the Town may rely upon such list. In addition, any Mortgage Holder may notify the Town of its address and request that the provisions of this Section 8.03 as they relate to notices apply to it. The Town agrees to comply with any such request.

Section 8.03.2 Mortgage Holder may Cure Developer Default.

In the event that the Developer receives notice from the Town of a default under this Agreement, and such default is not cured by the Developer before the expiration of the cure period therefor provided in Section 8.01 hereof, then the Mortgage Holder(s) may cure any such default within the time provided in Section 8.02(a) hereof; *provided, however*, that if the breach or default is with respect to the Developer's failure to construct the Project in accordance with the Approved Plans, the Approved Construction Documents, and the Approvals, nothing contained in this Agreement shall be deemed to authorize or permit such

Mortgage Holder either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Work (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the Town, by written agreement satisfactory to the Town, to complete the Work in the manner provided in this Agreement. Any such Mortgage Holder which shall properly complete the Work or applicable part thereof shall be entitled, upon written request made to the Town, to a Certificate of Completion in the manner provided in Section 3.08 hereof.

Section 8.04 Default of the Town.

Section 8.04.1 Town Default.

The failure of the Town to observe or perform any of the Town's covenants, agreements, or obligations hereunder to be performed after the Closing pursuant to Article 2 hereof, within sixty (60) days following receipt of written notice from the Developer, specifying such failure, or such longer period reasonably required to cure the breach, provided the cure is commenced reasonably promptly after receipt of said notice and continuously and diligently prosecuted to completion (said cure period, the "**Town Cure Period**"), shall constitute a "**Town Default**" for purposes of this Agreement.

Section 8.04.2 Rights of Developer Upon Town Default.

In the event that a Town Default has occurred, the Developer's sole remedy shall be to institute such action and proceedings for injunctive relief as may be appropriate against the Town, including actions and proceedings to compel specific performance, but no default by the Town shall entitle the Developer to recover any damages of any kind or nature whatsoever from the Town, or relieve the Developer from its obligations under this Agreement.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES

Section 9.01 Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the Seller, as of the date of this Agreement, with the understanding that said representations and warranties constitute a material inducement to and are being relied upon by the Seller, as follows:

- (a) the Developer is a _____, duly organized, validly existing and in good standing under the laws of _____ and duly qualified to do business in the Commonwealth of Massachusetts. The Developer has the power and authority to execute and deliver this Agreement and to perform its covenants and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action and has full, right, power and authority to execute and deliver this Agreement on behalf of the Developer;

- (b) this Agreement has been duly and validly authorized, executed and delivered on behalf of the Developer;
- (c) this Agreement and each and every document and instrument to be executed and delivered by the Developer pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally;
- (d) the Developer is not the subject of any Insolvency Event and the Developer has no knowledge of any threatened or contemplated Insolvency Event. The Developer possesses the financial resources to perform all of its covenants and obligations contained in this Agreement and to be contained in the documents and instruments to be executed and delivered pursuant to this Agreement, and the performance of said covenants and obligations will not render the Developer the subject of an Insolvency Event. As used in this Agreement, the term "**Insolvency Event**" shall mean, as it pertains to a party, any proceeding by or against said party under any federal or state law or statute regarding bankruptcy, insolvency, fraudulent transfers, receivership, conservatorship, custodianship, trusteeship, moratorium or creditors' rights or debtors' obligations generally; any assignment for the benefit of creditors by said party; any failure of said party to pay its obligations as they come due; the insolvency of said party; or entry by said party into a composition agreement;
- (e) there are no pending or, to the best of the Developer's knowledge, threatened actions, suits, or proceedings before any court, arbitrator or governmental or administrative body which may materially adversely affect the properties, business or condition, financial or otherwise, of the Developer or its ability to perform its obligations under this Agreement; and
- (f) neither the execution, delivery or performance of this Agreement nor compliance herewith (i) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the organizational documents of the Developer, (2) to the best of the Developer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority; or (3) any agreement or instrument to which the Developer is a party or by which it is bound, or (ii) results in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument.

Section 9.02 Representations and Warranties of the Seller.

Notwithstanding the provisions of Section 2.06 hereof, the Seller hereby makes, as of the date of this Agreement, the following representations and warranties to the Developer in connection with the sale of the Property and the transactions contemplated by this Agreement,

with the understanding that said representations and warranties constitute a material inducement to and are being relied upon by the Developer:

- (a) the Seller has the power and authority to execute and deliver this Agreement and to perform its covenants and obligations under this Agreement, and the person executing this Agreement has been duly authorized by all necessary action and has full, right, power and authority to execute and deliver this Agreement on behalf of the Seller;
- (b) this Agreement has been duly and validly authorized, executed and delivered by the Seller;
- (c) this Agreement and each and every document and instrument to be executed and delivered by the Seller pursuant to this Agreement, when fully executed and delivered by all intended signatories thereto, shall constitute the valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject to general equitable principles and applicable provisions of law related to bankruptcy, insolvency and creditors' rights generally; and
- (d) there are no written leases, subleases, licenses or other agreements entered into by the Seller which grant any possessory interest in and to the Property or any portion thereof that will survive the Closing.

Section 9.03 Brokers.

The Seller and the Developer represent and warrant to each other that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction.

Section 9.04. Survival.

The provisions of this Article 9 shall survive the Closing and delivery of the Deed.

ARTICLE 10

GENERAL PROVISIONS

Section 10.01 Request for Proposals Incorporated.

The Terms and Conditions of the RFP issued by the Town of Andover dated _____, 2020 (including all Addenda thereto issued by the Town), are incorporated herein by reference. A copy of the RFP and all such Addenda is on file in the office of the Town Purchasing Agent.

Section 10.02 Access.

The Developer shall permit the Town or its agents to enter the Land [*and the Private Property – if applicable*] and the Project at any reasonable time, from time to time, to inspect the Land [*and the Private Property – if applicable*] and the Project and to ensure compliance with

the provisions of this Agreement; *provided, however*, that the Town provides the Developer at least twenty-four (24) hours' prior notice thereof (which may be verbal), except in the event of an emergency.

Section 10.03 Duration.

The restrictions and covenants contained in (i) Sections 5.01.1, 5.03, 6.01 and 7.01 of this Agreement shall have a term equal to the Restriction Period, (ii) Sections 5.02, 6.02 and 6.03 of this Agreement shall have a term commencing on the date of this Agreement and expiring on the date on which a Certificate of Completion is issued for the Project in accordance with the provisions of Section 3.09 hereof, and (iii) Section 5.01.2 of this Agreement shall remain in force and effect in perpetuity. The Developer agrees that each of this Agreement, the restrictions set forth in the Deed, and the Restriction Documents is an "other restriction held by a governmental body" as that term is used in M.G.L. c.184, §26 and thus not subject to the limitations on the enforceability of restrictions in M.G.L. c.184, §§26 – 30 and is enforceable for the full period provided in this Agreement, the Deed or the Restriction Documents, respectively. Nevertheless, if recording of a notice is ever needed to extend the time period for enforceability of any of the restrictions and covenants referenced in the first sentence of this Section 10.03, or set forth in the Deed or the Restriction Documents, the Developer hereby appoints the Select Board of the Town as the Developer's agent to execute and record such notice and agrees that the Developer shall execute and record such notice upon request.

Section 10.04 Enforcement.

The parties hereto, and thereafter the permitted successors and assigns of the parties hereto, covenant and agree that the Developer will reimburse the Town for all reasonable costs and expenses (including without limitation attorney's fees and expenses) incurred by the Town in enforcing this Agreement or in remedying or abating any violation thereof.

Section 10.05 Indemnification.

The Developer shall indemnify, defend and save harmless the Town and the Town's officers, employees, agents, consultants, contractors and attorneys, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees and expenses) that may arise in whole or in part out of or in connection with any use, occupancy, conduct or management of or from any work or thing whatsoever done in or about the Land [*and the Private Property – if applicable*] and the improvements thereon by the Developer, its employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or any condition of the Land [*and the Private Property – if applicable*], including, without limitation, any environmental condition now existing or hereafter arising at the Land [*and the Private Property – if applicable*] and the improvements thereon regardless of the cause thereof. The duty to defend shall immediately accrue and be owing upon the assertion of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact and trial. The existence of insurance shall in no way limit the scope of the Developer's indemnification under this Agreement. The provisions of this Section shall survive,

as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement; *provided, however*, that if this Agreement is terminated in accordance with its terms prior to the Closing, the Developer's obligations under this Section with respect to physical conditions and environmental conditions at the Property shall be limited to damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments arising out of, relating to or caused by any act or omission on the part of the Developer, the Developer's Representatives, or any of their respective employees, agents, contractors, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

Section 10.06 Notices.

Any and all notices required herein shall be in writing and shall be deemed properly given upon the earlier of: (i) two Business Days after deposit with the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one Business Day after deposit with an express courier service such as Federal Express; or (iii) actual receipt. All such notices will be delivered to the address specified below or each other address as the respective parties may designate in writing:

if to the Developer: _____

With a copy sent in the same manner to:

if to the Town: Town Manager
 Town Hall
 36 Bartlet Street
 Andover, MA 01810

With a copy sent in the same manner to:

Town Counsel

Section 10.07 Waiver.

The failure on the part of the Developer or the Town, as the case may be to complain in any one or more cases of any action or non-action on the part of the other party or to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option contained herein no matter how long the same may continue, shall never be deemed or construed to be a waiver by such party of any of its rights hereunder, or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Further it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the Developer or the Town shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No waiver shall be effective unless in writing and signed by the party to be charged therewith.

Section 10.08 Rights and Remedies Cumulative.

Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties to this Agreement, whether provided at law, in equity, or by this Agreement, shall be cumulative, and the exercise by either party of any one or more such remedies shall not preclude the exercise of any or all such remedies for any other default under this Agreement.

Section 10.09 Headings and Captions for Convenience Only.

The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of, this Agreement, nor in any way affect this Agreement.

Section 10.10 Parties Bound; Covenants Running with the Land.

As used in this Agreement, (i) the terms “the Town” or “Seller” shall include such party and its successors and assigns, and (ii) the term “Developer” shall include such party, its permitted successors and assigns, and also its permitted successors in title to the Property or any portion thereof. The provisions contained herein shall be covenants running with the land; *provided, however*, that notwithstanding the foregoing, no party shall be liable for any breach of any covenant or agreement on the part of the Developer herein contained except such as occur during the time it holds the Developer’s interest under this Agreement *[and the Private Property – if applicable]* and the improvements thereon or any portion thereof. No Mortgage Holder shall be deemed to be the owner of the Land *[and the Private Property – if applicable]* and the improvements thereon until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

Section 10.11 Entire Agreement of Parties; Amendments.

This Agreement, including the exhibits attached to this Agreement and references contained in this Agreement, constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, offers, counteroffers, agreements and understandings of the parties regarding said subject matter,

whether written or oral, all of which are hereby merged into and superseded by this Agreement. This Agreement may not be amended, modified, extended, revised or otherwise altered, nor may any party hereto be relieved of any of its liabilities or obligations hereunder, except by a written instrument duly executed by the Developer and the Seller.

Section 10.12 Governing Law.

This Agreement shall be governed exclusively by the provisions of the internal laws of the Commonwealth of Massachusetts, without reference to conflicts of laws principles.

Section 10.13 Conditions to Effectiveness of Agreement.

The Developer and the Seller further acknowledge that notwithstanding anything to the contrary contained herein, this Agreement shall not be considered a binding agreement unless and until (i) this Agreement has been authorized by the Select Board, has been fully executed by both the Developer and the Seller, and a fully executed copy has been delivered, and (ii) the Disclosure of Beneficial Interests form required by M.G.L. c. 7C, Section 38 has been executed and filed.

Section 10.14 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.15 Number and Gender.

All words used herein in singular number shall extend to and include the plural number, where the context so requires. All words used herein in the plural number shall extend to and include the singular number, where the context so requires. All words used herein in any gender, whether male, female or neuter, shall extend to and include any and all genders as may be applicable in any particular context.

Section 10.16 Construction.

This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the Seller and the Developer have contributed with the advice of counsel to the preparation of this Agreement.

Section 10.17 Business Day.

As used in this Agreement, the term “**Business Day**” shall mean, collectively, any day other than a Saturday, Sunday or official Federal or Commonwealth of Massachusetts holiday. If any payment to be made or obligation to be performed hereunder is to be made or performed on

a day other than a Business Day, it shall be deemed to be made or performed in a timely manner if done on the next succeeding Business Day.

Section 10.18 No Third Party Beneficiaries.

This Agreement and the representations, warranties, covenants and agreements contained herein are made and entered into for the sole protection and benefit of the parties hereto and their permitted successors in interest and assigns, if any, and no other person, persons, entity or entities shall have any right of action hereon or right to claim any right or benefit from the terms contained herein or be deemed a third party beneficiary hereunder.

Section 10.19 Time of the Essence; Extension of Time.

Time is of the essence in the performance of each of the parties' respective obligations contained herein. Upon written request by the Developer including a statement of good cause therefor, the Town Manager may, in his or her sole and absolute discretion, on behalf of the Town extend any deadline or period for performance by the Developer hereunder, provided that any such extension must be in writing and signed by the Town Manager and the Developer.

Section 10.20 Determinations and Approvals under this Agreement.

The Developer acknowledges that all determinations or approvals to be made by the Town under the terms and provisions of this Agreement are separate and distinct from approvals, determinations or approvals required to be obtained from the Town or an agency, board, commission or department of the Town under any applicable Law, e.g. the approval of plans and specifications under the terms and provisions of this Agreement will not and cannot operate as an approval by the Town of Andover Building Department.

Section 10.21 Action by the Town.

Unless otherwise expressly provided in this Agreement, any decision, consent or approval required to be made or issued by the Town shall be made or issued by the Town Manager.

Section 10.22 Town's Members and Officers Barred from Interest.

(a) No official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No official or employee of the Town, acting as such, shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Town or for any amount which may become due to the Developer or to its successors or on any obligations under the terms of this Agreement.

(b) After the date hereinabove first written, the Developer shall not, without a prior finding by the Town that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or

execution of the RFP or the Project and who is named on any list which may be furnished by the Town to the Developer as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Developer or in the Property *[or the Private Property – if applicable]*, prior to the completion of the Project in accordance with this Agreement and the Proposal.

(c) The provisions of this Section shall survive, as applicable, the Closing and delivery of the Deed, or the rescission, cancellation, or termination of this Agreement.

Section 10.23 Estoppel Certificate.

The Town agrees from time to time, within thirty (30) days of a written request by the Developer, to execute, acknowledge and deliver to the Developer a statement in writing certifying that this Agreement is unmodified and in full force and effect and that there are no uncured defaults by the Developer under this Agreement (or, if there have been any modifications, that the same are in full force and effect as modified and stating the modifications and if there are uncured defaults, the nature of such defaults).

Section 10.24 Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement. For purposes of the execution of any amendment or modification to this Agreement (but not for purposes of the execution of this Agreement itself), and any communications delivered pursuant to this Agreement (as it may be so amended or modified), the signature of a party on any counterpart thereof transmitted by facsimile or electronic mail shall be binding with the same force and effect as if it was manually affixed to a hard copy original thereof.

(Signature Page Follows)

WITNESS the above executed under seal as of the day and year first above written.

TOWN OF ANDOVER

By its Select Board

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, before me, the undersigned Notary Public, personally appeared the following members of the Select Board of the Town of Andover, namely

_____, _____, _____,
_____ and _____, who proved to me through
satisfactory evidence of identification, which was _____, to be the persons whose
names are signed on the proceeding or attached document, and acknowledged to me that they
signed it voluntarily for its stated purpose, on behalf of the Town of Andover.

Notary Public
My Commission Expires:

DEVELOPER:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, before me, the undersigned Notary Public, personally appeared _____, the _____ of _____, as aforesaid, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, on behalf of _____.

Notary Public
My Commission Expires:

LIST OF EXHIBITS

- Exhibit A: Legal Description and Plan of the Land
- Exhibit B: Excerpts from Proposal
- Exhibit C: Form of Deed
- Exhibit D: Title Insurance Commitment
- Exhibit E: Disclosure Statement re: Beneficial Interests in Developer
- Exhibit F: Certificate of Compliance with Tax Laws
- Exhibit G: Non-Collusion Certificate
- Exhibit H: Option Provisions

SCHEDULE OF DEFINED TERMS

Agreement	Preamble
Approval Conditions	Section 2.07
Approvals	Section 2.07
Approvals Issuance Date	Section 2.03
Approved Construction Documents	Section 2.08
Approved Plans	Section 3.01
Business Day	Section 10.17
Certificate of Completion	Section 3.08
Change in Identity	Section 5.02.1
Closing	Section 2.10
Closing Date	Section 2.12
Closing Escrow Agent	Section 2.12
Commence	Section 3.03
Complete	Section 3.03
CPP	Recitals
Deed	Section 2.02
Deposits	Section 2.01
Developer	Preamble
Developer Default	Section 8.01
Developer's Investigations	Section 2.04
Developer's Representatives	Section 2.04
Due Diligence Period	Section 2.04
First Mortgage Holder	Section 4.01
Force Majeure	Section 3.03
Funding Sources	Section 4.01
Insolvency Event	Section 9.01
Land	Recitals
Laws	Section 2.04
Mortgage	Section 4.01
Mortgage Holder	Section 4.01
Mortgage Holder Cure Period	Section 8.02
<i>[Notice of Option</i>	<i>Section 2.10]</i>
<i>[Option</i>	<i>Section 8.02]</i>
Outside Closing Date	Section 2.10
Permitted Exceptions	Section 2.02
<i>[Private Property</i>	<i>Recitals]</i>
Project	Recitals
Project Commencement Date	Section 3.03
Project Completion Date	Section 3.03
Property	Recitals
Proposal	Recital
Purchase Price	Section 2.01
Restriction Documents	Section 5.01.2
Restriction Period	Section 5.01.1

RFP
Seller
Seller's Representative
Title Defect Notice
Town
Town Cure Period
Town Default
Unpermitted Exceptions
Work

Recitals
Preamble
Section 2.04
Section 2.05
Preamble
Section 8.04.1
Section 8.04.1
Section 2.05
Recitals

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Exhibit A

Legal Description and Plan of Land

DRAFT

Exhibit B

Excerpts from Proposal

***[NOTE: THIS EXHIBIT WILL NOT BE ATTACHED TO THE COPY OF
THIS AGREEMENT WHICH IS RECORDED WITH
THE NORTHERN ESSEX REGISTRY OF DEEDS]***

DRAFT

Exhibit C
Form of Deed

DRAFT

Exhibit D

Title Insurance Commitment

DRAFT

Exhibit E

DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY

M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

INSTRUCTION SHEET

NOTE: The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

Section (1): Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

Section (2): Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

Section (3): Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

Section (4): Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

Section (5): Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

Section (6): List the names and addresses of **every** legal entity and **every** natural person that has or will have a **direct or indirect** beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

Section (7): Write "none" in the blank if none of the persons mentioned in Section 6 is employed by DCAMM. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM.

Section (8): The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

Section (9): Make sure that this Disclosure Statement is signed by the correct person. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate
Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor, Boston, MA 02108

DRAFT

**DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY**

M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT:

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

(4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL):

(5) ROLE OF DISCLOSING PARTY (Check appropriate role):

_____ Lessor/Landlord

_____ Lessee/Tenant

_____ Seller/Grantor

_____ Developer/Grantee

_____ Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

- (7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):
- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by lessor, lessee, seller or the purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

- (9) This Disclosure Statement is hereby signed under penalties of perjury.

PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

AUTHORIZED SIGNATURE of DISCLOSING PARTY

DATE (MM / DD / YYYY)

PRINT NAME & TITLE of AUTHORIZED SIGNER

DRAFT

Exhibit F

Certificate of Compliance with Tax Laws

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I certify under the penalties of perjury that I have filed all Massachusetts state tax returns; have complied with all Massachusetts laws relating to taxes; and have paid all Massachusetts state taxes required under law; and that the Federal Social Security number for the undersigned is _____.

Dated: _____, 20__

DEVELOPER

Exhibit G

Certificate of Non-Collusion

The undersigned certifies under the penalties of perjury that the foregoing Agreement has been obtained in good faith and without collusion or fraud with any other person (as used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals).

Dated: _____, 20__

DEVELOPER

Exhibit G

Option Provisions

[NOTE: THIS EXHIBIT WILL NOT BE ATTACHED TO THE COPY OF THIS AGREEMENT WHICH IS RECORDED WITH THE NORTHERN ESSEX REGISTRY OF DEEDS]

1. Properties and Purchase Price¹

Property

Purchase Price

2. In further consideration for the conveyance by the Town to the Developer of the Property, the Developer hereby grants to the Town an option to purchase all or such portions of the Private Property as the Town may specify (collectively, the “**Option Property**”) in the written notice of exercise given by the Town to the Developer (the “**Exercise Notice**”), in the manner provided in Section 10.06 hereof within ____ days of the re-acquisition by the Town of title to the Property pursuant to Section 8.02(d) hereof. The Exercise Notice shall state a closing date, which date shall not be less than thirty (30) days nor more than ninety (90) days after the day the Exercise Notice is given.

3. The deed to the Option Property is to be delivered and the Purchase Price therefor paid, unless otherwise agreed upon in writing, at 10:00 a.m. on the date fixed for conveyance in the _____ Town’s _____ Exercise _____ Notice, _____ at _____, Massachusetts (such date and time, as the same may be extended in accordance with the provisions of this Option Agreement, are hereinafter referred to as the “**Time of Closing**”).

4. If as of the Time of Closing there are any encumbrances or other matters of record which secure the payment of money, the Town may, at its election, pay to the holder thereof out of the Purchase Price otherwise payable to the Developer the amount required to satisfy or to release the same (provided that the instruments necessary for this purpose are either recorded or registered simultaneously with the deed to the Option Property or the Town has established customary arrangements for the payment of such amounts and the subsequent receipt of such instruments), and all amounts so paid shall be credited against the Purchase Price otherwise due and payable by the Town to the Developer. All payments of the Purchase Price to the Developer (as adjusted in accordance with the terms of these Option Provisions) shall be made by a certified or bank check or by federal wire transfer.

¹ Purchase Price for each Property is to be the consideration stated in the deed therefor from the private party owning the same to the Developer which is recorded as part of the Closing

5. The Developer shall convey title to the Option Property by a good and sufficient quitclaim deed running to the Town, which title shall be subject to all encumbrances and other matters of record as of the recording of such deed. If the deed refers to a plan necessary to be recorded therewith the Developer shall deliver such plan with the deed in form adequate for recording or registration. If title to the Property is registered, the deed shall be in form sufficient to entitle the Town to a Certificate of Title to the Property, and the Developer shall deliver with the deed all instruments, if any, necessary to enable the Town to obtain such Certificate of Title.

6. The Developer shall vacate the Option Property by the Time of Closing and shall deliver to the Town at that time full possession of the Option Property, free of all tenants and occupants, and otherwise in its then "as is" condition.

7. Upon any default by the Developer under these Option Provisions, the Town shall have all rights and remedies as are available to it under Section 8.02 of this Agreement.

8. The Developer shall deliver to the Town at the Time of Closing the following documents: the deed to the Option Property; an assignment of all Approvals; and such certifications as may be reasonably necessary for compliance with Internal Revenue Service regulations.

Triboard Meeting
Board of Selectmen/School Committee/Finance Committee
Wednesday, December 11, 2019

I. Call to Order/Roll Call

Chairwoman Gregory called the Triboard Meeting to order at 7:06 P.M. in the School Committee Meeting Room in the School Administration Building. Present from the Board of Selectmen: Annie Gilbert, Chris Huntress, and Alex Vispoli.

Finance Committee Chair Eugenie (Janie) Moffitt called the Finance Committee to order. Members present from the Finance Committee: Bojay Taylor, Paul Monticello, Spiro Christopulos, Paul Russo, Mary Ellen Logee, Andrew Betts.

School Committee Chair Joel Blumstein called the School Committee to order. Present from the School Committee: Tracey Spruce, Paul Murphy, Susan McCready, and Shannon Scully.

Others Present: Town Manager Andrew Flanagan, Superintendent Dr. Sheldon Berman, Deputy Town Manager Michael Lindstrom, Finance Director Donna Walsh, and Paul Szymanski, Assistant Superintendent for Finance and Administration. The meeting was duly posted and cablecast live.

II. Opening Ceremonies/Moment of Silence/Pledge of Allegiance

The meeting began with a Moment of Silence followed by a Salute to the Flag.

III. Presentation by the Town Manager

The Town Manager gave a financial presentation to the Tri-Board (see handout) beginning with the budget model used moving onto revenue assumptions and focusing on tax implications relative to service deliveries and talked about the CIP and unfunded liabilities; including pension/OPEB/health insurance. Revenue comes from local receipts, State Aid (Chapter 70 Education), and General Government Aid.

The Five-Year Financial Forecast is based on assumptions and schedules and becomes the driving force across all avenues. It is dynamic and used as a tool to establish predictability and identify structural impacts and acting as a framework to sustain competitive and responsive community services.

Budget Calendar: FY2020

Tax rates fund the appropriations approved in May of 2019 at the Annual Town Meeting. This fiscal year cannot be closed out until the Department of Revenue has completed their work. The FY-2021 budget will be released in February.

FY-21 Revenue Assumptions

Property Tax is based on a 2.5% levy increase and New Growth (10-year average a 5-year average) and \$300K in Excess Levy Capacity as voted by the Select Board.

Revenue from permits is 12% below projections, but license and permits overall was 112% of their budget. A lot of things in Andover happened this past year that don't typically happen due to the Columbia Gas Crisis. Hotels were booked solid for 4 months, restaurant receipts increased.

State Aid is expected to increase by 4% next year. School enrollment is slightly lower this

year and may affect Chapter 70 funding. Government Aid is expected to see a 2% increase. Generally, they apply a 5-year average for all 24 local revenue categories to build the projections for local receipts. Andover looked at the local receipts individually this year.

Mr. Flanagan explained the Tax Levy projections for FY-20 and FY-21. New growth for FY-20 was much higher than expected with \$142,600,950 in revenue and is projecting \$105,531,621 for FY-21. Appropriations can't exceed what is expected for new revenue and have classified \$2.7M for FY-20 for unused levy capacity. Calculations for additional taxes for the Debt Exclusion Projections for FY-20 is \$3,782,989 and \$3,530,110 for FY-21.

New Growth History is higher as a result of Columbia Gas replacing over 40 miles of the Gas Distribution System providing a \$1.3M increase in personal property and \$528,868 from Schneider Electric as a result of the expiration of the TIF Agreement now paying 100% of their assessed tax. The FY-20 New Growth Difference is \$1,894,058. Without Columbia Gas and Schneider's TIF ending, we would have just made our projection of \$2M in new growth.

Information was provided on the history of the average tax bill increase, based on a 5-year average of 3.38% and a 10-year average of 3.48%, and the Select Board's Goal for the annual increase to not exceed that of the 10-year average. The average tax bill increase for FY-2020 is projected 2.6%; in FY2019 it was 3.8%.

The greatest threat to Town funds is the Obligations section of the budget (Health Insurance, Pension and OPEB). Andover has maintained a AAA Bond rating and discussions are on-going with the Retirement Board on reducing the liability. It is expected that higher contributions to the fund will remain affordable with budgetary adjustments and the plan adopted will fund the OPEB liability in full during the next 36 years.

Savings of \$951,000 in the Health Insurance Budget can be used towards the OPEB Trust and augmented funding from increased cost share with employees and retirees has resulted in reductions. Health insurance has increased 8% every year, and are expecting an increase of 6% for the new year. Due to collective bargaining employee health insurance contributions, for employees hired after July 1, 2017, will increase by 30% resulting in a projected savings of just under \$600,000 for FY-21. Changes were made in section 21-23 of the plan design without collective bargaining as dictated by Massachusetts Law as long as the change is equivalent to the GIC plan.

Actions taken for OPEB:

The Unfunded Liability Offset increases include contributions of \$3.3M over 10-years, \$5.3M over 15-years, and \$7.6M over 20-years, with additional pension contributions of \$300,000 in FY-20 and a proposed additional pension contribution of \$1.7M in FY21. The planned increases for FY-20 and FY-21 of 20% is the most significant increase the Town has ever made year over year.

Total appropriation for Health Insurance for FY-21 is \$22,440,136, using a reduction of \$951,054 from OPEB savings and increased employee contributions of \$595,703. The Retirement Funding Schedule for Massachusetts requires all municipalities to be fully funded by 2035. Andover is on the path to fully fund by 2025 by increasing funding by 7.3%.

The boards discussed information on the funding schedules and options for Retirement /OPEB without putting pressure on the budget. Shelley Berman said the School Department will be seeing a significant increase in retirees 3-5 years out.

FY-2021 Budget Projections based on revenue projections of:

Property taxes:	\$159,456,443
State Aid	\$ 14,467,011
Local Receipts	\$ 13,497,890
Other Available Funds	<u>\$ 6,677,092</u>
Total available funds:	<u>\$194,098,436</u>

Budget Expenses:

Contractual/Capital Appropriations	\$61,589,131	
School increase at 3.86%	\$89,168,803	(+\$3,313,996)
Town increase at 2.75%	\$43,265,502	(+\$1,157,957)
K-Offset	<u>\$75,000</u>	
	<u>\$194,098,436</u>	

CIP for FY21-25

The total recommended CIP for FY-21-25 in the amount of \$27,21,737 is balanced and supports investments in all functions of Town Government. The target for non-exempt (under limitations of prop 2.5%) is being increased this year to 6% from 5.72% to offset the reduction in cable funds. The CIP aligns with the Select Board Strategic Goals for River and Open Space Access, Energy and Sustainability, and Capital Improvements using \$4,035,000 from Free Cash.

Energy & Sustainability Tree Management Fund-Recommendation \$500,000.

A review of trees falling, those in fear of falling, removing trees and replacing them was conducted by the Town. This is a one-time operation to remove hazardous trees and replace trees.

Town Sidewalk Program Recommendation \$950,000

Installation of new sidewalks and improvements and to use Free Cash to fund this work depending upon what the free cash balance is (exclusive of Article 5 funding). Hope to start installation of new sidewalks especially near the schools.

Public Meeting Access Improvements Recommendation \$625,000 from Free Cash to implement ADA improvements of all Town Buildings.

Open Space Improvements Recommendation \$760,000 from Free Cash

Dale Street, Haggetts Pond, and access to Merrimack River and \$1,200,000 from Free Cash for the High Plain Turf Field Complex (Andover Soccer Association providing funding as well).

Overview of CIP Funding by Source includes:

General Fund Revenue	\$4,311,108
General Fund Borrowing	\$8,292,000
Use of Free Cash	\$4,035,000
Special Dedicated Funds	\$1,564,279 (Chapter 90 funding)
Water/Sewer Enterprise	<u>\$8,549,350*</u>
Total Recommended CIP	\$27,231,737

* water main replacement work and Shawsheen Pump Station Project.

Exempt Debt and West Elementary School Project:

West Elementary was accepted into the Mass School Building Authority (MSBA) Program and have completed the designer selection choosing the architectural firm of SMMA who has a long-with standing history in Andover. The project is now moving into the Feasibility Study. Traditionally, MSBA funds 40% of the cost but they are contributing something less than 40%, and scope of project has not changed. Assuming there are no new projects all exempt projects will be retired by 2037.

The Town Manager presented information on Exempt Debt History and the existing tax impact on the average single-family home. Dr. Berman said they are estimating a cost of \$70M for West Elementary School Project which includes a Pre-K building. The will have a re-evaluation report at the end of the year and revisit the reimbursement rate (not for this year but the following year) at that time. This is a fair estimate.

FY21 Budget Considerations:

Maintain level services
Continue to maintain strong reserve balances
Accelerate funding for Pension and OPEB
Developing final plan for capping Ledge Road Landfill
Managing solid waste and recycling costs
Full Day Kindergarten (tuition free)
West Elementary and AHS Building Projects

Finance Committee response to CIP

The FinCom feels there is a good deal of spending that looks more like wants than needs with a lot of borrowing in School 5, and the 6% for CIP is high. They suggest looking at 4% and more for unfunded liabilities, and to look at ways to reduce some of the costs by reducing the expense. There needs to be a balance. The pension is problematic and needs to be fully-funded in 15 years; think more about funding this. Maybe look at borrowing to pay down that debt, and consider an over-ride for the nice to haves.

The Town Manager said appropriations were made based on what the town priorities are in the community, and used as a guiding document to create a budget to address all of the above; not using Free Cash for liabilities can be reconsidered with further discussion.

The FinCom has had many discussions about the financial solvency of the Town and they can't rubber stamp everything. FinCom agrees there needs to be a balance and robust discussions. There has to be some restraint somewhere and the budget is a point of tension. Can we accomplish the same return on investment with spending less?

Mr. Flanagan said every extra dollar possible has been earmarked for liabilities. Due to many years of deferred maintenance they need to address improvements and the goals of the initial sidewalk plans have never been reached.

Everything is important, but the FinCom thinks we should look at what we are spending. We are all trying to achieve as much of a balance as possible, some ideas aren't nice to have but an investment. (Dan Koh).

Joel Blumstein reported on the Full-Day Kindergarten (FDK) without tuition plan for the next school year and costs, otherwise from tuition, will come from the increase in the Chapter 70 funds directly contributable to having more full day students. The School Committee plans to vote at their next meeting to begin the tuition free FDK for the next school year and would like the endorsement of the FinCom and Select Board that in FY-22 the extra Chapter 70 money will be used to pay the cost of the FDK budget which will be offset by the increase in Chapter 70 money.

Shannon Scully would like a commitment that the resulting monies in Chapter 70 will come back to the School Operating Budget and an endorsement of the financial plan that the resulting additional Chapter 70 monies that comes back to us, specifically due to this change in eliminating ADK tuition, goes to the School budget. It will be a net sum of zero for the taxpayer.

IV. Adjournment

The Select Board on a motion by Alex Vispoli seconded by Dan Koh voted 4-0 to adjourn.

The School Committee on a motion by Tracey Spruce and seconded by Paul Murphy, voted 5-0 to adjourn.

The Finance Committee on a motion by Paul Russo seconded by Chris Christopoulos. voted 5-0 to adjourn.

At 9:35 P.M. the Triboard Meeting was adjourned.

Respectfully submitted,
Dee DeLorenzo
Dee DeLorenzo
Recording Secretary

Documents: Town of Andover Tri-Board Budget Presentation